95-954 (1)

No.

Supreme Court, U.S.
FILED
DEC 18 1995
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

ALBERT W. L. MOORE, JR.,

Petitioner,

v.

JANICE C. CAMPBELL, et al.

On Petition For Writ Of Certiorari
To The Missouri Court of Appeals
Western District

PETITION FOR WRIT OF CERTIORARI

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Independence, Missouri 64053
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December, 1995

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290 pp

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are:

1. Whether it is consistent with the due process of law required by the Fifth Amendment to the Constitution of the United States, as applied to the states by Section One of the Fourteenth Amendment thereto, for a state trial court to assign a cause to another judge without notice to a party plaintiff when such party thereby loses the opportunity to exercise an absolute peremptory right to change the assignee judge and otherwise object to the assignee judge's jurisdiction.

2. Whether it is consistent with the due process of law required by the Fifth Amendment to the Constitution of the United States, as applied to the states by Section One of the Fourteenth Amendment thereto, for a state court of appeals to sustain a decision rendered by the trial court in violation of such due process.

3. Whether it is consistent with the due process of law required by the Fifth Amendment to the Constitution of the United States, as applied to the states by Section One of the Fourteenth Amendment thereto, for a state court of appeals to review on the merits a case decided by the trial court in violation of such due process, when the jurisdiction of said court of appeals is limited to appellate matters by the state constitution.

LIST OF PARTIES

The petitioner (plaintiff) in the action below is Albert Wilson Luce Moore, Jr., an attorney at law. Petitioner represents Janice C. Campbell in a discovery of assets action on behalf of the decedent's estate of Joseph F. Campbell, their late father, against her brothers Joseph E. Campbell and Richard F. Campbell, co-personal representatives (co-executors) of the decedent's estate. Rebbecca Lake Overman is administrator ad litem of the decedent's estate.

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1. The ruling below, that a state appellate court may disregard the trial court's denial of constitutional due process is a sharp departure from, and severely undercuts, the well-established principle of the federal republic that state courts must enforce the Constitution and laws of the United States.

2. The ruling below, that a state appellate court may decide on the merits an appeal from a trial court dismissal entered in violation of constitutional guaranties of due process of law, encourages the widespread disregard of such guaranties by affording a path of easy evasion.

3. The ruling below, that a state appellate court may act as a court of original jurisdiction in deciding an unconstitutionally dismissed case on the merits, notwithstanding state constitutional limits on its jurisdiction, sows the seeds of a widespread dilution of constitutional due process.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

ALBERT W. L. MOORE, JR.,

Petitioner,

v.

JANICE C. CAMPBELL, et al.

On Petition For Writ Of Certiorari
To The Missouri Court of Appeals
Western District

Albert Wilson Luce Moore, Jr., an attorney at law ("Petitioner") petitions for a Writ of Certiorari to the Missouri Court of Appeals, Western District, to review the decision in Albert W. L. Moore, Jr. v. Janice C. Campbell, et al., 904 S.W.2d 378 (Mo.App.W.D. 1995) affirming the dismissal of two counts of a three-count petition for attorney fees, foreclosure of attorney's lien, and creditor's bill.

OPINION BELOW

The opinion of the Missouri Court of Appeals, Western District, is reported at 904 S.W.2d 378 (Mo.App.W.D. 1995) and is reproduced at Appendix page A-198.

JURISDICTION

The opinion of the Missouri Court of Appeals, Western District, was entered on the twentieth day of June 1995 (Appendix page A-198). The Supreme Court of Missouri denied Petitioner's application to transfer on the nineteenth day of September 1995 (Appendix page A-266).

This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(a) (Appendix page A-2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent provisions of the Constitution of the United States of America are the Fifth Amendment thereto and Section One of the Fourteenth Amendment thereto. Their texts are set forth at Appendix page A-1.

The germane provisions of the Constitution of 1945 of the State of Missouri are Sections 10 and 14 of Article 1 thereof. Their texts are set forth at Appendix page A-2.

STATEMENT OF THE CASE

Petitioner filed an action to secure his right to compensation for obtaining a judgment on behalf of the decedent's estate of Joseph F. Campbell. Defendants are the late Joseph F. Campbell's two sons and daughter, who are equal residuary beneficiaries of the estate, and the administrator ad litem of the estate. The two sons are also co-personal representatives of the decedent's estate (Appendix pages A-3 through A-10, A-112, A-113). On the eighteenth of September 1995, a petition for writ of certiorari, No. 95-452, was filed in this Court with respect to that judgment. It is currently pending.

Petitioner filed his action in a court of general jurisdiction (Appendix page A-116). Without notice to Petitioner, the case was transferred to the probate judge who was in charge of the decedent's estate and the adversary actions incident thereto, including the discovery of assets action that engendered the petition for writ of certiorari, No. 95-452, referred to above (Appendix pages A-112 through A-116). Although the Transfer Order dated the ninth of June 1994 (Appendix page A-105) showed Petitioner and Janice C. Campbell as copy recipients, neither received a copy when the transfer was made (Appendix pages A-116, A-117).

Petitioner's first knowledge of the assignment of the action to secure his compensation was the probate judge's order of the fourteenth of June 1994 purporting to dismiss the administrator ad litem (Appendix pages A-106 through A-109). Petitioner was thereby deprived of the crucial and absolute right to a peremptory change of judge and the opportunity to be heard on other issues before an order of dismissal was entered (Appendix pages A-116, A-117). The transferee judge on the fifteenth of December 1994 recused

himself from the decedent's estate altogether upon being challenged for bias (Appendix pages A-194 through A-197).

Nevertheless, the Missouri Court of Appeals, Western District, refused to address the constitutional issue of due process raised by Petitioner (Appendix page A-213).

Moreover, the Missouri Court of Appeals affirmed in part (Appendix pages A-198 through A-213) an order issued without notice or opportunity to be heard on the crucial matter of the judge who was to consider the same, a significant right under Missouri law (Appendix pages A-116, A-117).

Finally, the Missouri Court of Appeals proceeded beyond its authority and jurisdiction under the Constitution of Missouri and the United States Constitution by considering the merits of the case brought to it on appeal, instead of the unconstitutional conduct of the trial court, which rendered the dismissal void (Appendix pages A-228, A-250, A-251).

The Supreme Court of Missouri refused to review the opinion of the Missouri Court of Appeals (Appendix page 266).

Petitioner has raised the constitutional issue at the earliest opportunity and reaffirmed it at each stage of the appellate process (Appendix pages A-125, A-126, A-214, A-217, A-218, A-228, A-259).

REASONS FOR GRANTING THE WRIT

1. The ruling below, that a state appellate court may disregard the trial court's denial of constitutional due process is a sharp departure from, and severely undercuts, the well-established principle of the federal republic that state courts must enforce the Constitution and laws of the United States.

It is well established that state courts must enforce the Constitution of the United States and are themselves subject to its constraints against denial of due process (Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930) at page 454).

A right of action is property entitled to protection against deprivation without due process of law (16D C.J.S. Constitutional Law Section 1139 citing Sliosberg v. New York Life Ins. Co., 216 N.Y.S. 215, 217 App.Div. 67, affirmed 155 N.E. 749, 244 N.Y. 482 and 155 N.E. 913, 244 N.Y. 599).

In the instant case, Petitioner was deprived of property without due process of law by the trial court's transfer of his cause without notice or the opportunity to effect a peremptory change of judge under Rule 51.05 of the Rules of Civil Procedure (Appendix pages A-116, A-117).

What constitutes due process in a state court is relatively clear. Due process does not include the disregard of the state's constitutional and statutory safeguards. The sovereign must follow its own rules; failure to do so is a denial of due process (Bluth v. Laird, 435 F.2d 1065 (C.A. Va.); Layton v. Swapp, 484 F.Supp. 958 (D.C. Utah; Myers

v. Parkinson, 398 F.Supp. 727 (D.C. Wis.); Wolf-Lillie v. Kenosha County Sheriff, 504 F.Supp. 1 (D.C. Wis.), vacated on other grounds, 699 F.2d 864 (C.A.); United States ex. rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 Sup.Ct. 409 at pages 503 - 504).

The record shows the transferee judge was not merely biased, but passionately so (Appendix pages A-112 through A-126 and petition for writ of certiorari No. 95-452). An unbiased tribunal is fundamental to due process (Schweiker v. McClure, 456 U.S. 188, 72 L.Ed.2d 1, 102 Sup.Ct. 1665).

The trial court's denial of due process to Petitioner conflicts with this Court's opinion in Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 50 Sup.Ct. 451 (1930). The destruction of Petitioner's rights of action without notice or trial is at odds with In re LaMarre, 494 F.2d 753 (U.S.App. 6th Cir. 1974) and Union Pacific R. Co. v. Syas, 246 F. 561 (U.S.App. 8th Cir.).

The trial court in the instant case has evaded the protection afforded by Rule 51.05 by transferring a case to a biased judge without jurisdiction (Appendix pages) without notice to the party plaintiff (Appendix pages A-112 through A-118, A-194 through A-196, A-258 through A-262).

The opinion below tries to justify the trial court's conduct on the merits. However, a judgment arrived at in violation of due process is void, even if it can be justified on the merits (16D C.J.S. Constitutional Law Section 1168, citing Inland Steel Co. v. N.L.R.B., C.C.A. 7, 109 F.2d 236, affirmed 71 Sup.Ct. 209, 340 U.S. 193, 95 L.Ed. 207). No "judgment is just if not obtained by due process of law;

otherwise, courts could enter judgments without trial" (Union Pacific R. Co. v. Syas, 246 F. 561 (U.S.App. 8th Cir.) at page 568).

The instant case offers this Court the opportunity to reaffirm the fundamental precept that state courts cannot simply disregard the constitutional constraints of the United States and their respective member states, then strike the posture that the constitutional issue was not reached. As noted, a decision reached in violation of due process is a nullity; hence it must be treated as void. Allowing the contrary is a license to the courts to defy their subordination to the rule of law in the conduct of judicial functions.

2. The ruling below, that a state appellate court may decide on the merits an appeal from a trial court dismissal entered in violation of constitutional guaranties of due process of law, encourages the widespread disregard of such guaranties by affording a path of easy evasion.

The opinion below has accepted as an ordinary appeal the fruit of the poisonous tree, viz., the trial court's denial of due process. The opinion thereby encourages the trial courts to engage in violations of constitutional guaranties and breaches its own constitutional obligation to supervise the inferior courts.

The instant case affords this Court the opportunity to make it clear that the trial courts must deal with the products of their own breach of constitutional safeguards by the reversal of decisions wrongly arrived at, and remand to the trial level, rather than leaving such matters to the appellate

courts to deal with (improperly; see 3 below) as courts of original jurisdiction.

3. The ruling below, that a state appellate court may act as a court of original jurisdiction in deciding an unconstitutionally dismissed case on the merits, notwithstanding state constitutional limits on its jurisdiction, sows the seeds of a widespread dilution of constitutional due process.

The Missouri Court of Appeals is a court of appellate jurisdiction, which is not to take matters of original jurisdiction (Thummel v. King, 570 S.W.2d 679 (Mo.banc 1978). Moreover, the Missouri Court of Appeals is constitutionally bound to follow the decisions of the Supreme Court of Missouri (State v. Williams, 904 S.W.2d 103 (Mo.App.E.D. 1995), which it has failed and refused to do in the instant case. Specifically, it has disregarded Bracey v. Monsanto Company, Inc., 823 S.W.2d 946 (Mo.banc 1992), which requires that a dismissal be reversed when the petition sets forth any theory supporting relief. Bracey does not call for extended consideration of the erroneous dismissal below, much less taking it on as a matter of original jurisdiction.

Notwithstanding this constitutional structure of Missouri's judicial system and the appellate court's position in it, the Missouri Court of Appeals has handled the instant case, before it on the happenstance of the trial court's denial of due process, as a court of original jurisdiction. Hence Petitioner is denied the right to contend at all levels in accord with the forms of law.

> The right of a litigant to a trial in accordance with the forms of law, and with an opportunity to present his claim or defense, if he desires to do so, is a vital part of due process.

Ackermann v. United States, 178 F.2d 983 (Cir.5 1949). It is submitted that toleration of arbitrary, precipitate and uninformed decisions on the merits by appellate courts will corrode constitutional restraints in judicial proceedings and promote arbitrary decisions by rash and inadequately apprised appellate courts that cannot resist the temptation to make final disposition of cases that fall into their hands. Such conduct would be a perceived administrative shortcut. It will, however, expose individuals to the arbitrary and capricious resolution of disputes. The protection of individuals against arbitrary state action is the great purpose of constitutional due process (Wilwording v. Swenson, 502 F.2d 844, cert.den. 95 S.Ct. 835, 420 U.S. 912, 42 L.Ed. 843, on remand 405 F.Supp. 447, affirmed 538 F.2d 332).

The Missouri Court of Appeals is under constitutional injunctions to refrain from the exercise of original jurisdiction and to follow the decisions of the Supreme Court of Missouri. Its ultra vires conduct flies in the face of this Court's decision in United States ex. rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 Sup.Ct. 409 and the Sixth Circuit's decision in Bluth v. Laird, 435 F.2d 1065, both to the effect that it is a breach of due process for a sovereign to act in violation of the limits it sets on itself.

The opinion below is also in conflict with due process decisions of state courts of last resort other than Missouri's. See Smith v. Atty. Gen. of Maryland, 415 A.2d 651 (Md.App.1980); Alabama Public Service Commission v. Mobile Gas Co., 104 So. 538, 213 Ala. 50, 41 A.L.R. 872; and Steele v. Gann, 123 S.W.2d 520, 197 Ark. 480, 120 A.L.R. 754.

The instant case affords this Court the opportunity to counter the erosion of fundamental principles of judicial fair dealing by setting forth criteria for the state courts' adherence to constitutional limitations on their conduct.

CONCLUSION

For the foregoing reasons, the requested writ of certiorari should issue.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

ALBERT W. L. MOORE, JR.,

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PETITION FOR WRIT OF CERTIORARI

APPENDIX

APPENDIX
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FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be hade, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Article 1, Section 10, Missouri Constitution 1945

That no person shell be deprived of life, liberty or property without due process of law.

Article 1, Section 14, Missouri Constitution 1945

That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale denial or delay.

IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSOURI, AT INDEPENDENCE

ALBERT W. L. MOORE, JR. 554 South Ash Independence, Missouri 64053	)	
Plaintiff	)	
v.	)	Case No. CV94-5667
JANICE C. CAMPBELL 7065 East Calle Betelgeux Tucson, Arizona 85710	)	
JOSEPH E. CAMPBELL 1509 50th Street North Blue Springs, Missouri 64015	)	
RICHARD F. CAMPBELL 18819 East 5th Street North Independence, Missouri 64056	)	
JOSEPH E. CAMPBELL as Co-personal Representative of the decedent's estate of Joseph F. Campbell, Decedent's Estate No. 30836, Jackson County, Missouri serve at 1509 50th Street North Blue Springs, Missouri 64015	)	

RICHARD F. CAMPBELL as Co-personal Representative of the decedent's estate of Joseph F. Campbell, Decedent's Estate No. 30836, Jackson County, Missouri
serve at 1509 50th Street North
Blue Springs, Missouri 64015

and

REBBECCA LAKE OVERMAN
Administrator ad Litem in the decedent's estate of Joseph F. Campbell, Decedent's Estate No. 30836, Jackson County, Missouri
serve at 221 West Lexington
Independence, Missouri 64050

Defendants.

COUNT I: PETITION FOR ATTORNEY'S FEE

COMES NOW Plaintiff and for his first cause of action against Defendants herein, for attorney's fee, states and shows the Court as follows:

1. Plaintiff is engaged in the practice of law in the State Missouri and in said capacity was employed by Defendant Janice C. Campbell to advise and consult with her in connection with legal matters in which said Defendant was involved, and in the general course of said Defendant's affairs. Such employment commenced on or about the twenty-first day of September 1992, and has continued until the present day; during said time, Plaintiff has represented said defendant as her attorney in a discovery of assets action on behalf of the decedent's estate of Joseph F. Campbell, Estate No. 30836 currently under probate in the Probate Division of this court ("the estate") as set forth in Exhibit 1 attached hereto and by this reference made part hereof and, while Defendant Janice C. Campbell has paid to Plaintiff amounts on account from time to time, said Defendant has failed and refused, and still fails and refuses, to pay Plaintiff's complete billing as established by the services rendered according to the Exhibit 1 referred to in this paragraph.

2. Plaintiff maintains offices in Eastern Jackson County. Defendants live, work or may be found in Eastern Jackson County. The estate is being probated in Eastern Jackson County.

3. As a direct result of Plaintiff's representation of Defendant Janice C. Campbell on behalf of the estate, the Probate Division on the second day of March 1994 entered a judgment in favor of Defendant Rebbecca Lake Overman as administrator ad litem of the estate in an amount in excess of $200,000.00. A photocopy of said judgment is attached as Exhibit 2 hereto.

4. The balance of fees and disbursements owed to Plaintiff as of the twenty-eighth day of February 1994 is in the amount of Sixty-one Thousand Eight Hundred Thirty Dollars and Twenty-eight Cents ($61,830.28); said sum represents a reasonable fee for services so rendered by Plaintiff as set forth herein.

5. Plaintiff has made demand for payment of the balance due for said representation, and Defendants have failed and refused and still fail and refuse to pay the same.

WHEREFORE, Plaintiff prays judgment against Defendant Janice C. Campbell and against Defendants Joseph E. Campbell, Richard F. Campbell and Rebbecca Lake Overman in their capacity as representatives of the estate of Joseph F. Campbell, deceased, Decedent's Estate No. 30836 in the Probate Division of the Circuit Court of Jackson County, Missouri, at Independence, in the amount of Sixty-one Thousand Eight Hundred Thirty Dollars and Twenty-eight Cents ($61,830.28) with interest thereon at the rate of nine per cent (9%) from the fifteenth day of March 1994, fees and disbursements since the twenty-eighth day of February 1994, and Plaintiff's costs herein expended.

COUNT II: FORECLOSURE OF LIEN

COMES NOW Plaintiff and for his second cause of action against Defendants herein, for the foreclosure of attorney's lien, states and shows the Court as follows:

6. Plaintiff refers to paragraphs 1 through 5 above and repeats and repleads the same as if fully set forth herein.

7. During and pursuant to Plaintiff's representation of Defendant Janice C. Campbell against Defendants Joseph

E. Campbell and Richard F. Campbell, in a discovery of assets proceeding for and on behalf of the estate, the Probate Division of this Court entered a judgment for and on behalf of the administrator ad litem of said estate. Defendants Janice C. Campbell, Joseph E. Campbell and Richard F. Campbell are judgment debtors and equal beneficiaries of the said estate.

8. By notice, a photocopy of which is attached as Exhibit 3 hereto, a lien was impressed upon the recovery by the estate and payments to be made therefrom.

9. Notwithstanding such notice, no Defendant herein has made any payment to Plaintiff since the judgment date.

10. By their conduct and said judgment, Defendants have deforced said lien and become liable therefor to the extent of said deforcement.

WHEREFORE, Plaintiff prays this Court enter an order foreclosing the interests of Defendants Joseph E. Campbell and Richard F. Campbell in their capacity as Co-personal Representatives and Rebbecca Lake Overman as administrator ad litem of the estate, enter judgment against Defendants Janice C. Campbell, Joseph E. Campbell and Richard F. Campbell personally for deforcement of the lien, and direct that the proceeds of judgment and the current assets in the hands of the Probate Division be paid to Plaintiff until Plaintiff has been paid Sixty-one Thousand Eight Hundred Thirty Dollars and Twenty-eight Cents ($61,830.28) with interest thereon at the rate of nine per cent per annum from the fifteenth day of March 1994 and accrued fees and disbursements since the twenty-eighth day of February 1994, together with his costs herein expended, until Plaintiff has been fully paid.

COUNT III: CREDITOR'S BILL

COMES NOW Plaintiff and for his third cause of action against Defendants, for creditor's bill, states and shows the Court as follows:

11. Plaintiff refers to paragraphs 1 through 5 and 7 through 10 above and repeats and repleads the same as if fully set forth herein.

12. Defendants Joseph E. Campbell, Richard F. Campbell and Rebbecca Lake Overman have submitted to the Probate Division of the Court, and the Probate Division has unlawfully entered as a judgment without the signature of Janice C. Campbell required by Section 473.085 of the Revised Statutes of Missouri, a purported compromise settlement. The said Section 473.085 requires any such settlement to be reduced to "an agreement in writing ... executed by all competent persons ... having beneficial interests ...." Said judgment is therefore void. The purported judgment is also void for being entered in violation of the constitutional rights of Defendant Janice C. Campbell to a jury trial and due process of law. Said void judgment purports to set off mutual obligations to the prejudice of Plaintiff's equitable interests, after notice of said interests to the Probate Division and all parties and counsel.

13. Defendant Rebbecca Lake Overman proposes to eviscerate the fund now in custodia legis by selling its most valuable and productive asset and dissipating the proceeds by the payment of claims as yet unspecified in nature and amount, and to this end she has petitioned the Probate Division for leave to sell said asset.

14. Plaintiff has no adequate remedy at law. Assets in custodia legis are not subject to levy. The purported judgment of the second of March 1994 would largely preclude actual collection of the judgment by inequitable offsets for distributive shares, which offsets would themselves consist largely of the judgment debt. The Defendant administrator ad litem has not allowed the payment of Plaintiff from assets that are purportedly in her custody. Attempts to collect from the individual Defendants would multiply litigation.

WHEREFORE, Plaintiff prays this Court enter an order:

a. enjoining Defendants Joseph E. Campbell, Richard F. Campbell and Rebbecca Lake Overman in their capacities as personal representatives of the estate from any and all sales of assets thereof and all expenditures for claims, expenses or distributions until a final settlement has been prepared for the estate and approved by this Court, and then only in accordance with said final probate settlement;

b. directing Joseph E. Campbell, Richard F. Campbell and Rebbecca Lake Overman in their capacities as personal representatives of the estate to allow as part of said final settlement the payment to Plaintiff of Sixty-one Thousand Eight Hundred Thirty Dollars and Twenty-eight Cents ($61,830.28) and fees and disbursements accrued thereafter, with interest and the costs of this action, in discharge of his lien and recovery for the deforcement thereof, collecting to the extent necessary the judgment rendered on the second of March 1994, pending the resolution of Petitioner's appeal from said judgment;

c. enjoining Defendants Joseph E. Campbell, Richard F. Campbell and Janice C. Campbell from selling, transferring, or interfering with the property, debts, choses in action and equitable interests described in the purported

judgment of the second of March 1994 or successor thereto or currently under their control in the decedent's estate;

d. enjoining Defendants from making any assignment or confessing any judgment to enable creditors or persons other than Plaintiff to obtain a preference over Plaintiff or take any portion of property that could be applied to the purported judgment of the second of March 1994 or successor thereto or Count I of this petition;

e. appointing a receiver of all the amounts due and to become due under the purported judgment of the second of March 1994 or successor thereto and applying the same to the costs of this action and the judgment under Count I above and after the same shall have been fully paid any excess to the estate; and

f. directing Defendants Joseph E. Campbell, Richard F. Campbell and Rebbecca Lake Overman, as personal representatives of the estate, to pay to the said receiver all payments to which any Defendant is or may become entitled until Plaintiff be fully paid.

Respectfully submitted,

s/

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PRO SE

STATEMENT

JANICE C. CAMPBELL

DATE 1994		TIME	EXPENSE
3 February	Preparation of objections to settlement proposal, research and analysis, telephone conferences with Wayne Julian and Ashenfelter incident thereto	2.7	
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3 February	Preparation of objections to proposed settlement, conference outside office with Kurt Ashenfelter re financial exhibits	1.9	
5 February	Preparation of objections to settlement proposal	4.5	
5 February	Preparation of objections to settlement proposal	4.0	

6 February	Preparation of motion for mistrial, suggestions in support, proposed order, objections to proposed settlement 4.0	
6 February	Preparation of objections to proposed settlement, including conference in office with Kurt Ashenfelter 3.5	
7 February	Preparation of objections, including conference in office, Kurt Ashenfelter, conference outside office, Wayne Julian, conference outside office, Probate Clerk re filing of motion for mistrial 4.0	
7 February	Mailing expenses	$5.00
7 February	Preparation of objections, including telephone conferences with Julian and Kurt Ashenfelter, conference outside office with same 4.0	
7 February	Preparation of objections to proposed settlement 4.0	
7 February	Exhibit indexes	$12.75
8 February	Conference outside office, Probate Clerk, filed objections to proposed settlement, allocated travel time .4	

8 February	Postage		$11.80
9 February	Telephone conferences, Kurt Ashenfelter, petition to sell shares, misc.	.5	
16 February	Preparation of response to petition, research and analysis incident thereto	2.0	
18 February	Preparation of response to petition, research and analysis incident thereto	.8	
21 February	Preparation of response to petition to sell stock, claim by Janice C. Campbell for legal expenses, research and analysis incident to foregoing	4.2	
21 February	Preparation of response to petition to sell shares, research and analysis and telephone conference with Kurtis Ashenfelter incident thereto	2.0	
21 February	C.A.S.E. service of subpoenas		$200.00
21 February	Preparation of response to petition for order to sell Ford stock	.5	

22 February	Preparation for conference in office with Janice C. Campbell and Kurt Ashenfelter, response to petition, claim	2.8
22 February	Conference in office, Kurt Ashenfelter re response to petition, claim	.1
22 February	Conference in office, Janice C. Campbell; conference outside office, filed response to petition, travel time	.5

Trust deposit due, 31 January 1994	$54,952.73
47.8 hours @ $160.00 per hour	$7,648.00
Total expense	$229.55
Total deposit required, 28 February 1994	$62,830.28

STATEMENT

JANICE C. CAMPBELL

DATE 1994		TIME	EXPENSE
1 January	Telephone tolls:		
	$ 2.68		
	$ 1.84		
	$ 6.73		
	$13.32		
	$ 7.88		
	$ 2.64		
	$ .63		
	$ 1.67		
	$ 4.50		
	$12.39		
	$ 1.34		
	$52.56		$108.18
3 January	Allocated travel time, telephone conference with Kurtis B. Ashenfelter and Janice C. Campbell re status	.2	
3 January	Conference outside office, filing of interim submission of Arizona court file; allocated travel time	.2	

5 January	Preparation for trial, request for clarification, response to order to testify, misc.	2.0
5 January	Preparation for trial, including telephone conference with Janice C. Campbell, preparation of response to order to testify	3.0
6 January	Preparation for trial, Janice C. Campbell affidavit	2.7
6 January	Preparation for trial, Janice C. Campbell affidavit	3.0
10 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	2.5
10 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	2.0
10 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	1.0

12 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	1.0	
12 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	2.5	
13 January	Conference outside office, Harris re subpoenas	.1	
13 January	20 miles to court house and return @ $.28/mile		$5.60
13 January	Parking		$1.00
13 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	1.5	
13 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993	3.5	
13 January	Preparation for trial, including preparation of response to Court's order of 16 December 1993, research and analysis incident thereto	1.0	

15 January	Preparation for trial, including preparation of response, telephone conferences with Kurt Ashenfelter, transmission of draft affidavit	7.8
16 January	Preparation for trial, including preparation of response to Court's order to testify	1.0
16 January	Preparation for trial, including preparation of response to Court's order to testify	6.0
17 January	Preparation for trial, including preparation of response to Court's order to testify	1.5
16 January	Preparation for trial, including preparation of response to Court's order to testify	2.6
17 January	Preparation for trial, including telephone conference with Kurt Ashenfelter	3.2
17 January	Preparation for trial, including preparation of subpoenas	1.6

18 January	Preparation for trial, including preparation of subpoenas, telephone conferences re service of second amended petition	3.7
18 January	Preparation for trial, including telephone conference with Kurt Ashenfelter on status, telephone conference on service of subpoenas, preparation of subpoenas, conference outside office, filed response to order to testify	3.2
18 January	Preparation for trial, including preparation of subpoenas, motion for continuance	1.4
19 January	Preparation for trial, including preparation of subpoenas and motion for continuance	2.8
19 January	Preparation for trial, including preparation of subpoenas and motion; conference outside office, filed motion, allocated travel time	2.7

20 January	Preparation for trial, including preparation of subpoenas, conference with process-server	4.0	
20 January	Preparation for trial, including preparation of subpoenas	3.9	
20 January	Service fees, subpoenas		$225.00
21 January	Preparation for trial, including preparation of subpoenas	2.7	
21 January	79 photocopies @ $.15		$11.85
21 January	Preparation for trial, including telephone conference with Kurt Ashenfelter	4.0	
21 January	Service fees, subpoenas		$200.00
21 January	Preparation for trial	1.7	
22 January	Preparation for trial, including telephone conferences with Mitchells, Kurt Ashenfelter, preparation of letter to Mitchells, returns of service on Joseph E. Campbell	3.0	

22 January	Service of subpoenas		$75.00
22 January	Preparation for trial, research and analysis incident thereto, drafting instructions, Ping questions	2.5	
22 January	Preparation for trial, including drafting of jury instructions, research and analysis incident thereto	3.5	
23 January	Preparation for trial, including drafting of jury instructions, research and analysis incident thereto	3.0	
23 January	Preparation for trial, including conferences in office with Kurt Ashenfelter and Janice C. Campbell	7.3	
24 January	Conference outside office, Court Reporter; appearance and trial; preparation for following day of trial	12.0	
24 January	20 miles to courthouse and back @ $.28		$5.60
24 January	Parking		$4.50

25 January	Trial appearance and trial preparation	14.0	
25 January	20 miles to and from courthouse @ $.28		$5.60
25 January	Parking		$4.50
26 January	Appearance, preparation for trial, trial	13.0	
26 January	Parking		$4.50
26 January	20 miles @ $.28		$5.60
27 January	Appearance for trial, preparation therefor	8.0	
27 January	Parking		$5.50
27 January	20 miles @ $.28		$5.60
28 January	Conference in office, Kurt Ashenfelter re status	.3	
28 January	Conference outside office, Kurt Ashenfelter and Janice C. Campbell re status, evidence, next moves n/c	3.0	

30 January	Preparation of petition for writ of mandamus, notice, suggestions in support, motion to waive 5-day period	2.5	
30 January	Preparation of petition, suggestions, notice and motion to waive 5-day period	1.0	
30 January	Preparation of petition, suggestions, notice and motion to waive 5-day notice, research and analysis incident thereto; conference in office with Kurt Ashenfelter	4.0	
31 January	Preparation to file petition and suggestions, telephone conference with court clerk	1.7	
31 January	Parking		$1.00
31 January	20 miles to and from court house @ $.28		$5.60

Trust deposit due, 31 December 1993	$30,490.10
Received on account, 3 January 1994	($500.00)
Received on account, 18 January 1994	($500.00)
Received on account, 25 January 1994	($300.00)
156.8 hours @ $160.00 per hour	$25,088.00
Total expense	$674.63
Total deposit required, 31 January 1994	$54,952.73

STATEMENT

JANICE C. CAMPBELL

DATE 1993		TIME	EXPENSE
2 December	Ibarra consultation		$75.00
13 December	Preparation of responses to requests for production and motion for protective order, research and analysis incident thereto; telephone conferences Janice C. Campbell and Kurtis Ashenfelter re facts	3.0	
15 December	Preparation of motion for protective order, suggestions in support thereof and proposed order, including research and analysis and telephone conference with Kurtis Ashenfelter	4.0	
15 December	Photocopies of divorce records		$16.00
16 December	Photocopies of bank statements		$.54
16 December	Photocopies of divorce records		$17.00

16 December	Certified conservatorship file		$43.75
16 December	Preparation, service and filing of motion, suggestions and proposed order	3.0	
17 December	Telephone conference, Kurtis Ashenfelter re status of documents; research and analysis on public record	3.0	
17 December	11 photocopies @ $.15		$1.65
17 December	Telephone conference, Kurtis Ashenfelter re status	.1	
19 December	Review and analysis of documents from Kurtis Ashenfelter	.5	
20 December	Preparation for telephone conference with Janice C. Campbell and Kurtis Ashenfelter, preparation of interim submission of redacted Arizona court file to Missouri Court, further review and analysis incident thereto; telephone conference with Kurtis Ashenfelt and Janice Campbell	4.2	

23 December	Review and analysis of CFR sections; preparation of letter to new Independence Police Chief	2.6
24 December	Correction and revision of letter to Independence Police Chief and interim submission of redacted Arizona Superior Court file; preparation of letter to Kurtis Ashenfelter	.7
27 December	Preparation for trial and response to Court's order on motions	2.5
27 December	Preparation for trial and response to Court's order sustaining in part motion for sanctions	1.7
27 December	Preparation for trial and response to order, including telephone conference with Kurtis Ashenfelter and Janice C. Campbell	2.0

Trust deposit due 30 November 1993	$26,525.45
Received on account, 16 December 1993	($77.29)
24.3 hours @ $160.00 per hour	$3,888.00
Total expense	$153.94
Total deposit required, 31 December 1993	$30,490.10

STATEMENT

JANICE C. CAMPBELL

DATE 1993		TIME/EXPENSE
1 November	Conference in office, Kurtis Ashenfelter, preparation of motion, suggestions in support, proposed order to take charge of realty, telephone conferences with Light office and Overman	2.5
1 November	Preparation of motion to take charge of estate, suggestions in support, corrections and revisions thereof, research and analysis incident thereto	.7
2 November	Preparation for production of documents, preparation of motion to take charge of real estate, corrections and revisions thereof, conference in office with Janice C. Campbell re motion, etc.	1.2
2 November	Production of documents by Joseph E. Campbell	2.3

2 November	638 photocopies @ $.15		$95.70
3 November	Telephone conference, Peg, re viewing of property	.1	
4 November	Production of documents; travel time	2.5	
4 November	780 photocopies @ $.04 plus tax		$33.06
4 November	Telephone conferences, Hoffman and Kurtis Ashenfelter re house inspection	.3	
4 November	Preparation for house inspection, research and analysis incident thereto	.4	
6 November	Viewed property, travel time, conferences later with Kurtis Ashenfelter and Janice C. Campbell	2.0	
7 November	Preparation for trial, including research and analysis, dementia, factual investigation and analysis, bank records	1.3	
8 November	Preparation for trial including review and analysis of financial records	.8	

8 November	Office Max, 579 photocopies		$24.54
8 November	Production of documents, Joseph E. Campbell, allocated travel time	2.0	
10 November	Preparation of motion for protective order, suggestions in support, proposed order, research and analysis incident thereto	1.4	
10 November	Conference outside office, Court Administrator, filed motion for protective order, Joseph E. Campbell, production of documents, allocated travel time	2.0	
10 November	Office Max, 189 photocopies		$8.01
10 November	Telephone conferences, Les Wight re Kurtis Ashenfelter, Respondents' production	.1	
10 November	Telephone conference, Kurtis Ashenfelter re status and discovery	.1	
11 November	Research and analysis, champerty and maintenance	.6	

11 November	Review and analysis of documents	3.0	
13 November	Conference in office, Janice C. Campbell and Jack Gann re testimony	1.0	
17 November	Conference in office, Kurtis Ashenfelter re status	.5	
18 November	Transcript of Janice C. Campbell		$230.00
18 November	Conference in office, Kurtis B. Ashenfelter and Janice C. Campbell re discovery, status, priorities	2.8	
18 November	Photocopies		$15.89
22 November	Conference in office, Kurtis Ashenfelter re discovery, houses and Respondents' latest filings	2.0	
26 November	Conference in office, Kurtis Ashenfelter re pre-trial discovery	.3	
27 November	Preparation for trial, including responses to 16 November 1993 filings by Respondents	.3	

27 November	Preparation for trial, including preparation of motion to amend suggestions in support, proposed order, letter to Janice C. Campbell	2.8	
28 November	Preparation for trial, including responses to Respondents' latest pleadings	7.0	
29 November	Photocopies		$30.68
29 November	Conference outside office, Probate Clerk, filed motion to amend and suggestions, suggestions against conservator, sanctions, amended suggestions for protective order	.3	
29 November	Conference outside office, City of Independence re utilities bills, travel time	.3	
29 November	City of Independence, copies of utilities bills		$15.00
29 November	Postage		$10.62

Trust deposit due, 31 October 1993	$19,881.84
Received on account, 1 November 1993	($70.00)
Received on account, 18 November 1993	($15.89)
Received on account, 19 November 1993	($230.00)
40.6 hours @ $160.00 per hour	$6,496.00
Total expense	$463.50
Trust deposit required, 30 November 1993	$26,525.45

STATEMENT

Janice C. Campbell

DATE 1993		TIME	EXPENSE
3 October	Preparation, suggestions in support of motion to enforce discovery	3.0	
4 October	Telephone conference, Wight re possible settlement	.1	
4 October	Formulation of possible counteroffer	.7	
4 October	Telephone conference, Kurtis B. Ashenfelter and Janice C. Campbell re settlement	1.1	
5 October	Preparation of motion for enforcement of discovery; telephone conference with Judge Borron and Les Wight re scheduling of discovery hearing and trial	.4	
5 October	Telephone conference, Kurtis B. Ashenfelter re settlement, strategy and status	.5	

5 October	Preparation, suggestions in support of motion for enforcement of discovery, suggestions in opposition to continuance, suggestions in opposition to scheduling order	.7	
5 October	247 photocopies @ $.15		$37.05
5 October	Postage		$5.80
5 October	Preparation for Richard F. Campbell deposition	.9	
6 October	Preparation for Richard F. Campbell deposition, deposition	3.5	
6 October	Preparation, letter to Wight, telephone conference with Kurtis B. Ashenfelter and Janice re Richard F. testimony, evidence, settlement proposal	2.5	
7 October	Exhibit indexes		$8.00
7 October	Conference outside office, Dr. Ibarra re expert testimony, allocated travel time	1.5	

7 October	20 miles to and from conference outside office @ $.26		$5.20
7 October	Parking		$1.50
8 October	Deposition of Joseph E. Campbell and preparation therefor	6.0	
11 October	Telephone conference, Kurtis B. Ashenfelter re travel plans, view of property, other pre-trial discovery	.1	
12 October	Preparation for discovery hearing, trial	.3	
12 October	Preparation for discovery hearing, including preparation of subpoenas, telephone conferences with Judge's chambers	.5	
12 October	Preparation for discovery hearing, including preparation of subpoenas	.8	
12 October	Telephone conferences, court reporter re transcript	.2	

12 October	Telephone conference, private investigator re service of subpoenas	.1	
13 October	Service fees		$75.00
15 October	Preparation for 18 October 93	1.5	
15 October	Preparation for hearing, including review and analysis of Respondents' motion for sanctions, preparation of letter to Wight	2.0	
16 October	Preparation for 18 October 93 hearing	1.5	
16 October	Preparation for 18 October 93 hearing	3.0	
16 October	Preparation for 18 October 93 hearing on enforcement of discovery	.9	
17 October	Preparation for 18 October 93 hearing	3.0	

17 October	Preparation for 18 October 93 hearing, including telephone conference with Janice C. Campbell and Kurtis B. Ashenfelter	2.5	
18 October	Hearing, preparation therefor, including conference outside office with C.A.S.E. re service on Richard F. Campbell and Joseph E. Campbell, travel time, conference outside office and telephone conference re deposition schedule, etc.	4.0	
18 October	Conference in office with Janice C. Campbell and Kurtis B. Ashenfelter, preparation therefor	2.5	
18 October	60 photocopies @ $.15		$9.00
19 October	Conference in office, Kurtis B. Ashenfelter and Janice C. Campbell re evidence and witnesses	2.5	
20 October	Preparation for Janice C. Campbell deposition	.2	

20 October	Telephone conference, Kurtis B. Ashenfelter; status and plans for action	.5
21 October	Conference in office, Janice C. Campbell and Kurtis B. Ashenfelter re evidence; preparation of letters to Overman and Glenna Campbell	3.0
22 October	Preparation for conference in office with Janice C. Campbell and Kurtis B. Ashenfelter	.8
24 October	Review and analysis of Paden Welch file	1.5
25 October	Conference in office, Janice C. Campbell and Kurtis B. Ashenfelter; telephone conferences, Townsquare Management and Kurtis B. Ashenfelter re evidence and management of real estate	.5
26 October	Preparation for conference in office with Kurtis B. Ashenfelter and Janice C. Campbell	1.2

26 October	Conferences with Janice C. Campbell and Kurtis B. Ashenfelter	5.0
26 October	Preparation for Janice C. Campbell deposition, including research and analysis	1.2
27 October	Preparation for Janice C. Campbell deposition, including research and analysis	1.0
27 October	Conferences outside office and deposition of Janice C. Campbell, travel time	6.0
27 October	Telephone conference, Kurtis B. Ashenfelter re events, status	.5
27 October	Preparation of letter to Overman and Wight re Kurtis B. Ashenfelter's status as a non-party	.3
30 October	Conference in office, Gary White, re Campbell brothers and conduct in respect of decedent's property	.9

31 October	Preparation, letters and enclosures to Wight, Overman, IRS	1.5

Trust deposit due, 30 September 1993	$8,912.29
Received on account, 14 October 1993	($500.00)
70.8 hours @ $160 per hour	$11,328.00
Total expense	$141.55
Trust deposit required, 31 October 1993	$19,881.84

STATEMENT

Janice C. Campbell

DATE 1993		TIME	EXPENSE
1 September	Pre-trial discovery, including review of letter from Warr	.1	
2 September	Pre-trial discovery, including telephone conference with Independence Regional Health Center counsel, preparation of letter to her, affidavit under uniform business records as evidence act	2.0	
2 September	Preparation for depositions and trial, pre-trial discovery, including telephone conference with Kurtis B. Ashenfelter	.6	
2 September	Preparation for deposition, including research and analysis of law on survival of attorney-client privilege; returned call from Les D. Wight; left word	1.7	

3 September	Review and analysis of letter from Julian re deposition	.1
4 September	Initial review and analysis of Kurtis B. Ashenfelter letter and enclosures, and Respondents' motion to quash subpoenas, and motion for counterclaim	.3
6 September	Review and analysis of motion to quash; preparation of suggestions in opposition to motion to quash and motion to order respondents to authorize disclosure of legal and accounting records, suggestions in support thereof and proposed order, research and analysis incident thereto	7.5
6 September	Preparation of suggestions in opposition to motion to quash; corrections and revisions thereof, research and analysis incident thereto; preparation for Warr deposition	4.0

7 September	Conference outside office, Probate Clerk, Warr, Wight, Overman, re depositions, filing of suggestions in opposition to motion to quash, motion for order to authorize disclosure of legal and accounting, telephone conferences re scheduling	2.5	
7 September	Telephone conference, Julian re scheduling of depositions; preparation of letters re scheduling, telephone conferences re scheduling	1.5	
7 September	Parking		$3.00
7 September	Telephone conference, Overman re scheduling, preparation of letters in light of Warr position on release, cover letter to Overman re case, preparation for depositions	2.2	
7 September	Postage		$2.00
8 September	Telephone conference, Kurtis B. Ashenfelter re status	.5	

8 September	Preparation, letter to Overman, corrections and revisions thereof	.5	
9 September	Preparation of letters to Judge Borron and Respondents' counsel	1.5	
10 September	Telephone conferences, Kurtis B. Ashenfelter re status, Feutz-Harters's office re Medical Center records	.1	
11 September	Court reporter		$120.00
11 September	Preparation of suggestions in opposition to motion to allow counterclaim	.3	
12 September	Preparation, suggestions in opposition to motion, letters to Borron and Overman	2.7	

13 September Preparation of letters to administrator ad litem and counsel for Respondents, telephone conferences with Kurtis B. Ashenfelter and Judge Borron's chambers, preparation for conference with Kurtis B. Ashenfelter; conference in office with Ashenfelter, conference outside office with Kurtis B. Ashenfelter and Health Center medical records 5.5

13 September Preparation, suggestions in opposition to motion for leave to file counter-claim, research and analysis incident thereto 1.1

14 September Copies from Independence Regional Health Center $77.50

14 September Preparation for conference in office with Kurtis B. Ashenfelter, review of letter from Wight, preparation of letter to Overman, corrections and revisions of suggestions in opposition to motion to file counter-claim, preparation for depositions, possible settlement conference and trial, research and analysis incident to foregoing 2.0

14 September	95 photocopies @ $.15		$14.25
14 September	352 photocopies @ $.15		$52.80
15 September	Telephone conference, Kurtis B. Ashenfelter re possible meetings; telephone call to Overman office, left word	.1	
15 September	Preparation for trial, including initiation of review and analysis of Independence Regional Health Center records, telephone conference re possible expert	.7	
15 September	Conference outside office, served and filed suggestions in opposition to motion for counter-claim, allocated travel time	.2	
15 September	Postage		$1.96
15 September	Parking		$1.25
15 September	20 miles to and from court house @ $.26		$5.20

15 September Preparation for depositions and trial, including research and analysis, review of hospital and land records, telephone conference with Kurtis B. Ashenfelter .9

15 September Conference outside office, Kurtis B. Ashenfelter re evidence .4

16 September Conference in office, Kurtis B. Ashenfelter re status, financial analysis 1.2

16 September Conference in office, Kurtis B. Ashenfelter re status, financial analysis .4

16 September Telephone conference, Kurtis B. Ashenfelter re record of 27 April 1992 proceeding .1

17 September Preparation for conference outside office with Judge Borron and Wight, including conference in office with Kurtis B. Ashenfelter .5

17 September Preparation for conference outside office with Borron and Wight, depositions, trial; conference outside office, Borron and Wight, travel time; preparation of letters to Judge Borron and Janice C. Campbell 5.0

17 September Telephone conference, Kurtis B. Ashenfelter re status, course of conference outside office with Wight and Borron 1.0

20 September Preparation for depositions, including letters to Overman, Wight, Warr and Julian, telephone conference with reporter 1.7

21 September Preparation for depositions, telephone conferences and letters to reschedule; research and analysis, privilege 2.6

21 September Research and analysis, privileged communications; preparation of letter to Tilling; preparation for Warr deposition 1.9

22 September Preparation for depositions .5

22 September	Telephone conferences re new date and time for Warr deposition; preparation of letter to Warr re new date and time	.3	
22 September	Preparation for depositions, including research and analysis, privileged communications	.4	
23 September	Conference outside office, Probate Clerk re subpoenas, travel time	.3	
23 September	Reviewed letter from Warr; preparation, responses	.3	
23 September	37 photocopies @ $.15		$5.55
23 September	Research and analysis re claim of privilege by fiduciary in action by beneficiary re the trust	1.1	
24 September	Telephone conferences, Overman and Wight offices re scheduling of depositions; preparation, motion for protective order, research and analysis incident thereto; preparation of letter to Warr re scheduling of deposition	3.5	

24 September Preparation of motion for protective order and suggestions in support 1.2

24 September Preparation of suggestions in support of motion for protective order, research and analysis incident thereto .3

24 September Preparation, proposed protective order .2

24 September Telephone conferences, Cross and Tilling re deposition; corrections and revisions of suggestions .4

24 September Corrections and revisions of motion for protective order, suggestions in support and proposed order, telephone call to Janice C. Campbell, left word 1.5

25 September Preparation of depositions and letter to Wight re pre-trial discovery 2.5

26 September Preparation for Tilling deposition .7

26 September	Preparation for depositions, research and analysis incident thereto, telephone conference with Kurtis B. Ashenfelter re status, telephone conference with Ninfa Redmond re expert witness on Joseph F. Campbell's competency	3.5	
26 September	40 photocopies @ $.15		$6.00
27 September	Preparation for Tilling deposition; conference outside office, Probate Clerk's office, filed motion for protective order; Tilling deposition, travel time	3.5	
27 September	20 miles @ $.26		$5.20
27 September	Preparation for Julian deposition, research and analysis incident thereto; telephone conferences to offices of potential expert witnesses; Julian deposition, travel time incident thereto	3.0	
27 September	Telephone conference, Dr. Kapf re expert witnesses	.1	

27 September Preparation for Richard F. Campbell deposition 3.0

28 September Preparation for Richard F. Campbell deposition, waiting for him, telephone conferences with Court Reporter and Kurtis B. Ashenfelter re form of subpoena, addresses for service, preparation of motion to enforce discovery, telephone call to Judge Borron's chambers re hearing date 2.7

28 September Preparation of suggestions in support of motion for enforcement of discovery, research and analysis incident thereto; initial review and analysis of Respondents' motion for scheduling order and suggestions in opposition to motion for protective order 1.4

29 September Telephone conference, Dr. Ibarra's office re consulting; research and analysis re scope of desired testimony .6

29 September Telephone conference
Dr. Ibarra re consulting .1

30 September Preparation, reply to
answer to motion for
protective order, suggestions
in opposition to motion for
discovery scheduling order,
suggestions in opposition
to motion for continuance 2.0

30 September Preparation, reply to answer
to motion for protective order,
suggestions in opposition to
motion for discovery scheduling
order, suggestions in opposition
to motion for continuance 2.0

30 September Court Reporter, Tilling and
Julian depositions $206.80

88.5 hours @ $160.00 per hour	$14,160.00
Total expenses	$501.51
Previous retainer balance	$361.71
Received on account, September 10, 1993	($1,000.00)
Received on account, 13 September 1993	($77.50)
Favored client discount	($5,310.00)
Remaining retainer	($7,912.29)
Trust deposit needed to restore retainer to $1,000.00 level ($7,912.29 + $1,000.00)	$8,912.29

STATEMENT

Janice C. Campbell

DATE 1993		TIME	EXPENSE
5 August	Telephone conference, Rhonda, Les Wight's office, re scheduling of deposition of Janice Campbell	.1	
7 August	Preparation, letter to Respondents' counsel re discovery, compliance with Court orders	.2	
17 August	Review and analysis of documents produced and responses to interrogatories; preparation, letter to Les Wight	.3	
18 August	Preparation, letters to Les Wight, Janice C. Campbell, affidavit	.7	
18 August	Preparation of motion for partial distribution, including correction and revision of draft affidavit	.9	

18 August	Preparation, motion for partial distribution, especially exhibits	.2	
18 August	Preparation, motion for partial distribution, corrections and revisions of first draft	.3	
19 August	Telephone conference, Respondents' counsel re deposition, other pending matters	.1	
19 August	Telefax message		$4.00
22 August	Review and analysis of letters from counsel for Respondents; preparation, letter to counsel	.3	
23 August	Exhibit indexes		$5.96
23 August	Telephone conference, Janice C. Campbell re telephone conference on 24 August 1993	.1	
24 August	Telephone conference, Janice C. Campbell and Kurt Ashenfelter re pre-trial discovery	.2	

25 August	Preparation for deposition, including preparation of letter to Respondents' counsel	..4	
25 August	Telephone conference, Kurtis B. Ashenfelter re date correction in affidavit	n/c .1	
25 August	Preparation for depositions and trial, pre-trial discovery, including affidavit, subpoenas, letters, telephone call to Independence Regional Health Center counsel	1.6	
27 August	Conference outside office, Probate Clerk, filed motion for partial distribution, allocated travel time	.1	
27 August	Telephone conference, reporter re service of subpoenas, notices, telefacsimile	.1	
27 August	199 photocopies @ $.15		$29.85
29 August	Preparation of letter to Janice C. Campbell re discovery	.1	

30 August	Telephone conference, Rebbecca Overman re scheduling of depositions; preparation, letters to deponents	.2	
31 August	Postage		$4.10

5.9 hours @ $160.00 per hour	$944.00
Total expense	$43.91
Previous retainer balance	$349.62
Payment on account 24 August 1993	($1,000.00)
Remaining retainer	$361.71
Trust deposit needed to restore retainer to agreed $1,000.00 level ($1,000.00 - $361.71)	$638.29

STATEMENT

JANICE C. CAMPBELL

DATE EXPENSES 1993		TIME	
1 July	Telephone conference, Court Administrator's office re photocopies	.1	
1 July	Court Administrator, photocopies		$69.50
1 July	Preparation of lis pendens	.2	
1 July	Conferences outside office, Recorder's office re Joseph E. Campbell ownership of Lot 8, Sandalwood, Blue Springs, filing of lis pendens, Court Administrator's office re copies, computer - aided legal search, misc., travel time	.9	
1 July	139 photocopies @ $.15		$20.85
1 July	County Recorder, lis pendens filing		$12.00
1 July	Reviewed Dr. Sosa-Roche's statements	.1	

2 July	Review and analysis of photocopies from Joseph E. Campbell divorce file	.6	
2 July	Postage		$2.90
2 July	Review and analysis of Wight letter; preparation of letter to Borron	.4	
5 July	Preparation of first interrogatories	.5	
5 July	Preparation of first interrogatories	.4	
5 July	Preparation of first interrogatories and first set of requests for production of documents	1.5	
5 July	Preparation of first interrogatories and requests for production of documents	.5	
6 July	Preparation of first interrogatories and requests of production	.7	

9 July	Review and analysis of eight orders of 7 July 1993; preparation of letter to Kurt B. Ashenfelter	.2	
9 July	51 photocopies @ $.15		$7.65
9 July	Postage		$2.14
9 July	Preparation of letter to Kurtis B. Ashenfelter	.1	
10 July	Postage		$1.21
12 July	Telephone conference, Kurtis B. Ashenfelter re Borron orders, status of motion for appointment of guardian/conservator, pre-trial discovery, status as temporary conservator, possible partial distribution	.5	

5.4 hours @ $160.00 per hour	$864.00
Total expense	$116.25
Previous retainer balance	($1,170.13)
Retainer deposit, 30 July 1993	$2,500.00
Remaining retainer	$349.62
Trust deposit needed to restore retainer to agreed $1,000.00 level ($1,000.00 - $349.62)	$650.38

STATEMENT

Janice C. Campbell

DATE 1993		TIME	EXPENSE
1 June	Conference outside office, Probate re proof of service, allocated travel time	.2	
1 June	Photocopies, probate		$4.00
9 June	Preparation, letter to Respondents' counsel re discovery depositions	.3	
9 June	Preparation, suggestions in opposition to motion to appoint guardian/conservator ad litem, including factual investigation, research and analysis, travel time incident thereto	1.5	
10 June	Preparation, suggestions in opposition to motion to appoint guardian/conservator ad litem, including research and analysis	.5	
10 June	Preparation of interrogatories	.5	

10 June	Preparation of interrogatories and telephone conference with Kurtis B. Ashenfelter 1.5	
10 June	Preparation of letter to Respondents' counsel re discovery .2	
10 June	Preparation, motion to strike; research and analysis incident thereto .3	
10 June	Telephone conference, Probate Clerk re setting for hearing .1	
10 June	Preparation, motion to strike .2	
11 June	Preparation, motion to strike, suggestions in support, proposed order, research and analysis incident thereto .7	
11 June	Telefax message	$4.00
14 June	Preparation of interrogatories .5	
14 June	17 photocopies @ $.15	$2.55
16 June	Preparation of suggestions in opposition, corrections and revisions thereof .5	

16 June	Preparation of suggestions in opposition, corrections and revisions, research and analysis served and filed same, travel time	1.5	
16 June	110 photocopies @ $.15		$16.50
18 June	Telephone conference, Probate Clerk re hearing record	.1	
18 June	Telephone conference, Probate Clerk re review of record	.1	
18 June	Telefax messages		$7.00
18 June	Review of hearing tape, travel time	.3	
19 June	Reviewed letter from Respondents' counsel	.1	
21 June	Preparation, letter to Respondents' counsel to consent to release of medical records, scheduling of depositions	.3	

23 June	Telephone conference, Kurtis B. Ashenfelter re depositions, status of matter .1	
24 June	Review of letter from Respondents' counsel to Judge Borron, preparation of letter to Judge Borron, telephone conference with Kurtis B. Ashenfelter .8	
24 June	Reviewed telephone message from Kurtis B. Ashenfelter, preparation of letter to him .1	
30 June	Preparation, suggestions in opposition to motion for hearing on all motions and letter to Kurtis B. Ashenfelter .8	
30 June	Conferences, Tax Assessor's office, County Recorder's office re 3939 Linden Lane, computer search and conference outside office with Court Administrator's office re Joseph E. Campbell divorce, travel time .7	
30 June	County Recorder, photocopies	$6.00

30 June	Conferences outside office, Probate Clerk re filing suggestions in opposition, Tax Assessor re Lot 8, Sandalwood, travel time	.5	
30 June	Tax Assessor print-outs		$3.00

12.2 hours @ $160.00 per hour	$1,952.00
Total expense	$43.05
Previous retainer balance	$824.92
Remaining retainer	($1,170.13)
Trust deposit needed to restore retainer to agreed $1,000.00 level ($1,170.13 + $1,000.00)	$2,170.13

STATEMENT

Janice C. Campbell

DATE 1993		TIME	EXPENSE
8 April	Telephone conference, Kurtis B. Ashenfelter re manifold ramifications of current situation	.6	
13 April	Telephone conference, Judge's chambers re service of petition	.1	
16 April	Preparation, petition to suspend authority, research and analysis incident thereto	.9	
16 April	Preparation, motion to suspend co-personal representative authority and proposed order, letter to Kurtis B. Ashenfelter	.3	
20 April	Telephone conference, Judge's chambers re service of petition to discover assets	.1	

23 April	Telephone conference, Judge's chambers re service of petition to discover assets	.1
23 April	Review and analysis of letter from Kurtis B. Ashenfelter	.1
23 April	Review and analysis of documents from Kurtis B. Ashenfelter	1.3
26 April	Telephone conference, Helen Westbrook re service, issuance of summonses confirmed	.1
27 April	Conference outside office, filed motion for successor administrator	.2
27 April	Preparation, report to Kurtis B. Ashenfelter	.3
4 May	Telephone conference, deputy re evasion of service by Joseph F. Campbell	.1
17 May	Conference outside office, Probate Clerk re status of service, allocated travel time	.3

19 May	Telephone conference, Judge's chambers re service on Joseph E. Campbell	.1
19 May	Telephone conference, Probate Clerk's office re service of petition for discovery of assets and petition to suspend authority	.1
25 May	Preparation, first set of requests for production of documents	.9
25 May	Preparation, first set of requests for production, certificates of service, first set of interrogatories	.4
26 May	Preparation, first set of interrogatories	.1

6.1 hours @ $160.00 per hour	$976.00
Previous retainer balance	$800.92
Received trust deposit, 28 May 1993	$1,000.00
Remaining retainer	$824.92
Trust deposit needed to restore retainer to $1,000.00 level	$175.00

STATEMENT

JANICE C. CAMPBELL

DATE 1993		TIME	EXPENSE
1 March	Preparation of first amended petition, research and analysis; preparation of letter to Wight	.6	
1 March	63 photocopies @ $.15		$9.45
2 March	Telephone conference, Wight re Richard F. Campbell call to Janice, counsel of record, etc., preparation of letter to Thomas O'Brien	.2	
4 March	Court reporter, subpoenas, service, etc.		$76.00
8 March	Preparation for deposition of Medical Center of Independence Custodian of records, including conference outside office with court reporter and telephone conferences with the court reporter and the custodian of records	.3	

9 March	Deposition, Medical Center of Independence, preparation therefor, travel time	.3	
9 March	Photocopies, medical records, Medical Center of Independence		$857.50
9 March	Review and analysis of letter from Judge Borron, telephone conference with Cross Reporting, preparation of letters to Independence Manor, Tilling, Wight and Kurtis B. Ashenfelter	.3	
9 March	Telephone calls, Court re hearing cassette and reviewing file	.1	
10 March	Research and analysis re possible dismissal and re-filing of action to discover assets, action for money had and received, statute of limitations	.2	
10 March	Research and analysis, action for money had and received, fraud, civil conspiracy, accrual of cause of action, saving statute in connection with possible dismissal and refiling	.2	

10 March	Telephone conference, court reporter re Medical Center of Independence records	.1	
11 March	Conferences outside office, probate clerk and Division 108 clerk re matters in file, hearing cassette on last year's proceeding, allocated travel time	.2	
11 March	Probate, photocopies		$3.00
11 March	Telephone conference, Thomas J. O'Brien office re withdrawal; left word	.1	
12 March	Cross, subpoena preparations, services and witness fees		$124.10
15 March	Corporate abstracts, Independence Regional Health Center and Medical Center of Independence		$10.00
15 March	Conference outside office, Secretary of State's office, allocated travel time	.2	
15 March	Cross Reporting Service, deposition		$107.00
19 March	Telefacsimile messages		$13.00

19 March	Factual investigation, review and analysis of Borron letter, preparation of reply, research and analysis incident thereto	.2
19 March	Telephone conference, O'Brien re withdrawal	.1
19 March	Review and analysis of MCI medical records, preparation of chronology	.7
22 March	Review and analysis of MCI medical records, preparation of chronology; telephone conferences with Morgan County Recorder's office, title Company, Ruzicka office re land sale	.4
22 March	Correction and revision of letter to Judge Borron, telephone call to Quick and Reilly, research and analysis incident thereto	.2
22 March	Preparation of petition, research and analysis incident thereto, documents to eliminate O'Brien representation	.7

23 March	Preparation of dismissal, suggestions in support, proposed order	.2	
23 March	Preparation of report to Ashenfelter	.2	
23 March	Postage (Express Mail)		$9.95
23 March	18 photocopies @ $.15		$2.70
26 March	Certified copy of deed, Morgan County Recorder		$2.00
26 March	Reviewed message from Ashenfelter, called Post Office re status of express mail; further telephone conferences with Post Office after Ashenfelter call to Peggy	.2	
27 March	Review and analysis of letter and documents from Ashenfelter	.1	
29 March	Preparation of letter to O'Brien re withdrawal	.1	
29 March	Telephone conference, Ruzicka re land sale	.1	
29 March	17 photocopies @ $.15		$2.55

6 hours @ $160.00 per hour	$960.00
Total expense	$1,217.25
	$2,177.25
Previous retainer balance	($2,021.83)
Retainer deposit, 16 March 1993	$1,000.00
Retainer deposit, 19 April 1993	$4,000.00
Remaining retainer	$800.92
Trust deposit needed to restore retainer to $1,000.00 level	$199.08

STATEMENT

JANICE C. CAMPBELL

DATE		TIME	EXPENSE
1992			
3 November	Conference outside office, Tax Assessor re valuation of real estate, allocated travel time	.2	
3 November	Tax Assessor, print-outs		$3.00
28 November	Telephone tolls		$23.60
1993			
8 February	Review and analysis of motion to dismiss	.1	
8 February	Telephone call to Wight office, left word; preparation of letter to Ashenfelter, review and analysis incident thereto	.3	
8 February	Preparation of draft consent to withdraw, motion and suggestions, and proposed order and withdrawal	n/c	

8 February	Preparation, consent to withdrawal, telephone conference, Probate Clerk	n/c	
11 February	Research and analysis on doctrine of advancement	.1	
12 February	Research and analysis on final settlement, objections, right to hearing (court's discretion) and preparation of suggestions in opposition to motion to dismiss and letter to Ashenfelter	.7	
13 February	Postage		$2.65
15 February	Preparation, letter to Judge Borron, suggestions in opposition to motion to dismiss, research and analysis incident thereto	.9	
16 February	Review and analysis of court file, allocated travel time	.6	
16 February	20 miles to and from Kansas City @ $.26		$5.20
16 February	Photocopies		$7.00

16 February	Parking	$2.00
16 February	Telephone conference, Ashenfelter and Janice Campbell re status, evidence, etc.	.5
17 February	Preparation of suggestions in opposition to motion to dismiss including telephone conference with Lois Bush; preparation of subpoenas duces tecum to Tilling, Independence Regional Health Care Center, Independence Manor, Richard F. and Joseph E. Campbell	1.3
17 February	Preparation of suggestions, including telephone conferences with Janice C. Campbell and Kurt Ashenfelter, preparation of affidavits, research and analysis	1.2
18 February	Preparation of suggestions, telefax message to Ashenfelter; research and analysis on gift and due process	1.4

18 February	Telephone calls, Lois Bush re affidavit and Les Wight re suggestions in opposition; preparation of suggestions, reviewed documents from Ashenfelter; conference in office, Lois Bush re affidavit; telephone conference, Jack Gann	1.1	
18 February	103 photocopies @ $.15		$15.45
18 February	Telephone conference, Jack Gann re Joseph F. Campbell condition in 1985	.1	
19 February	Conference outside office, Probate Clerk re Janice C. Campbell affidavit, allocated travel time	.3	
23 February	Preparation of depositions, including review of documents from Ashenfelter, telephone conferences with Cross	.3	
23 February	Preparation of letter to Borron; preparation for depositions	.2	
24 February	Preparation for depositions	.3	

24 February	Preparation for depositions, including telephone calls to custodian, court, court reporter and lawyers, research and analysis re status of court reporter as officer of court and use of subpoena duces tecum	1.0	
25 February	Preparation for depositions, including research and analysis on privilege, preparation of letter to Health Center counsel	.8	
25 February	Postage		$3.38
25 February	Factual investigation, County Recorder records re sale of Blue Springs property, allocated travel time	.5	
25 February	Photocopies, County Recorder		$4.00
26 February	Review and analysis of letter from Health Center counsel, motion to quash; preparation, suggestions in opposition to motion; telephone conference, reporter re deferral and form	.7	

26 February	Preparation, letters to deponents, suggestions in opposition to motion to quash, motion to amend with suggestions in support and first amended petition and proposed order, motion for order to produce medical records, telephone conference with Ashenfelter	2.1
26 February	Preparation, letters to Baucom, Feutz-Harter, motion to amend with suggestions, first amended petition and proposed order, motion for order to produce medical records	.8
27 February	Preparation, first amended petition, factual investigation, research and analysis incident thereto	.9
27 February	Preparation, first amended petition, motion, suggestions and order to authorize production of medical records, research and analysis incident thereto	1.4

28 February	Preparation, suggestions in opposition to motion to quash, motion to produce, order to produce, first amended petition, corrections and revisions thereof	.7
28 February	Preparation, motion to amend, first amended petition, suggestions in support, proposed order, motion to produce, suggestions in support, proposed order, suggestions in opposition to motion to quash, letter to Independence Regional Health Center counsel, research and analysis incident thereto	1.5

20 hours @ $160.00 per hour	$3,200.00
Total expense	$66.28
	$3,266.28
Previous retainer balance	$244.45
Retainer deposit, 19 February 1993	$1,000.00
	$1,244.45
Remaining retainer	($2,021.83)

STATEMENT

JANICE C. CAMPBELL

DATE 1992		TIME	EXPENSE
6 October	Preparation of entry of appearance, response to motion to appoint guardian or conservator, and letter to Ashenfelter	.8	
6 October	Corrections and revisions, entry of appearance, suggestions in opposition, letter to Ashenfelter	.2	
8 October	Conference, Probate Clerk's office, filed entry of appearance and response to motion; allocated travel time	.1	
10 October	Telephone calls, Judge Borron's chambers re conference outside office with Borron and Wight	.1	

26 October	Preparation for conference outside office with Judge Borron and Wight, research and analysis incident thereto	.6	
27 October	Conference outside office with Borron and Wight, allocated travel time	.5	
27 October	Parking		$1.35
27 October	20 miles to and from Kansas City court house @ $.26		$5.20
27 October	Preparation, letter to Wight	.2	

2.5 hours	
@ $160.00 per hour	$400.00
Total expense	6.55
	$406.55
Previous retainer balance	$651.00
Remaining retainer	$244.45

STATEMENT

JANICE C. CAMPBELL

DATE		TIME	EXPENSE
1992			
3 September	Telephone conference, Ashenfelter re background of case n/c	.2	
7 September	Factual investigation, review and analysis of documents, research and analysis in re action to discover assets n/c	4.3	
10 September	Telephone conference, Ashenfelter re status, evidence, etc. n/c	.5	
12 September	Review of materials sent n/c	.3	
14 September	Factual investigation, including telephone conferences with Luric, Lotven, Probate Clerk's office, O'Brien n/c	.7	
14 September	Conference outside office with Probate Clerk's office, reviewed court file, travel time n/c	1.5	

14 September	20 miles to and from court house in Kansas City @ $.26		$5.20
14 September	Parking		$1.35
14 September	Telephone conference, Ashenfelter re facts, status, next moves	.6	
18 September	Preparation letter to Borron	.4	
18 September	Preparation, engagement letter n/c	.7	
27 September	Review of letter from Judge Borron, documents on Standard Bank, Independence Manor and Medical Center of Independence	.7	
30 September	Conference outside office, Probate Clerk re photocopies from court file, allocated travel time	.3	
30 September	Parking		$1.25
30 September	20 miles to and from Kansas City Court house @ $.26		$5.20
30 September	Photocopies, Probate Court		$16.00

2 hours @ $160.00 per hour	$320.00
Total expense	$29.00 $349.00
Original retainer	$1,000.00
Remaining retainer	$651.00

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL,	)	
et al.,	)	
	)	
Respondents,	)	
	)	
In the Estate of	)	
Joseph F. Campbell,	)	
	)	
Deceased.	)	

JUDGMENT ENTRY

On the 27th day of January, 1994, this Court took up the oral motion of Rebbecca Lake Overman, administrator ad litem, to compromise and settle the claims arising from Plaintiff's Second Amended Petition to Discover Assets and Defendants' Cross-Petition to Discover Assets; and having heard the evidence and being advised in the premises the Court took this matter under advisement pending the furnishing of a judgment entry.

Now on this 2 day March, 1994, this Court again takes up the Administrator ad Litem's motion and makes the following findings of fact:

Between August 1, 1983 and October 21, 1987 the decedent, Joseph F. Campbell, transferred certain assets into the names of one or more of the parties.

There exists an issue of fact as to whether the decedent was totally incapacitated as a result of Alzheimer's disease and unable to make decisions regarding disposition of his assets from his entry into a nursing home in 1983 until his death on October 21, 1987.

The Administrator ad Litem reasonably believes that during the period of his incapacity, the decedent with assistance from the Defendants sold 654 shares of stock in Ford Motor Co. Inc. and used the proceeds from said sale to have a home built on Lot 8, SANDLEWOOD [sic] ADDITION in Blue Springs, Missouri for the purpose of providing a residence for the plaintiff.

Plaintiff Campbell asserts that the 654 shares of Ford Motor Company stock should not have been sold and that had said stock not been sold, the estate would be entitled to the appreciation in the value of the stock due to stock splits and an increased market value and the dividends that would have been paid from the date of sale to the date of trial.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the plaintiff received $16,800.00 in rental income from the decedent's real property at 1928 1/2 Ash Street in Independence, Missouri.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred three certificates of deposit totalling $30,000 into the name of defendant, Richard Campbell.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred two certificates of deposit into the name of defendant, Joe E. Campbell.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred one certificate of deposit into the name of plaintiff, Janice Campbell.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the defendant's [sic] paid to themselves or others for their exclusive benefit certain monies from the decedent's checking account. Defendant, Richard Campbell received $2,244.26 and defendant, Joe E. Campbell received $1,777.21 from said account.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the plaintiff took possession of a 1967 Motorcycle, a 1968 seventeen foot Silvereagle trailer, a 1967 Mark Twain 120 horsepower boat, and a homemade frame trailer.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity, the defendant, Richard Campbell took possession and title to a 1973 Jeep CJ5 and a homemade trailer.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity, the defendant, Joe E. Campbell took possession and title to a 1970 Ford wagon engine.

The Administrator ad Litem reasonably believes that following the death of the decedent, defendant, Richard Campbell received $1,813.00 in proceeds from certain dividends from Ford Motor Co. Inc. which were in the decedent's name alone.

The Administrator ad Litem reasonably believes that following the death of the decedent, defendant, Joe E. Campbell received $5,537.00 in proceeds from certain dividends from Ford Motor Co. Inc. which were in the decedent's name alone.

The Administrator ad Litem reasonably believes that further litigation of the disputed issues is not likely to result in any additional advantage to the estate and is not economically feasible.

The Administrator ad Litem recommends that the following assets be found to be assets of the Estate of Joseph F. Campbell:

> Lot 8, SANDLEWOOD [sic] Addition, a subdivision in Blue Springs, Jackson County, Missouri.
>
> Refund from Richard Campbell in the sum of $4,244.26 to Standard State Checking Account # 2002434.

Refund from Joe E. Campbell in the sum of $1,777.21 to Standard State Checking Account # 2002434.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,037.50 for prior distribution of C. D. #890076 at Standard State Bank.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $6,337.50 for prior distribution of C. D. #13443 at Standard State Bank.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $4,820.83 for prior distribution of C. D. #10859 at Standard State Bank.

Refund from Joe E. Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,200.00 for prior distribution of C. D. #12825 at Standard State Bank.

Refund from Joe E. Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,416.66 for prior distribution of C. D. #10510 at Standard State Bank.

Refund from Janice Campbell in the sum of $10,000.00 plus

interest at the rate of 6.5% in the sum of $6,012.50 for prior distribution of C. D. #10881 at Standard State Bank.

Return from Janice Campbell of 1967 Motorcycle valued at $100.00, a 1968 17 foot Silvereagle trailer valued at $150.00, a 1967 Mark Twain 120 horsepower boat valued at $150.00, and a homemade frame trailer valued at $200.00.

Return from Joe E. Campbell a 1970 Ford Wagon engine valued at $200.00.

Refund from Janice Campbell of $750.00 from proceeds from sale of household goods.

Refund from Richard Campbell of $175.00 for value of household goods previously distributed to him.

Refund from Joe E. Campbell of $75.00 for value of household goods previously distributed to him.

Refund from Richard Campbell of $1,813.00 for proceeds from Ford Motor Co. Inc. stock dividends plus interest accrued at the rate of 3% in the sum of $108.00.

Refund from Joe E. Campbell of $5,537.00 for proceeds from Ford Motor Co. Inc. stock dividends plus interest accrued at the rate of 3% in the sum of $332.22.

Refund from Janice Campbell of $16,800.00 for proceeds of rental income from real property located a [sic] 1928 1/2 Ash Street, Independence, Missouri plus interest at the rate of 6.5% in the sum of $4,290.45.

The settlement proposed by the Administrator ad Litem appears to fairly affect the rights of all parties, is a reasonable compromise of the controversy, and is in the best interest of the estate.

The Defendants have consented to the settlement offered by the Administrator ad Litem.

NOW, THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED that the settlement offered by the Administrator ad Litem be and it is hereby accepted as a fair and reasonable compromise of the controversy raised in Plaintiff's Second Amended Petition to Discover Assets and the Defendants' Cross-Petition to Discover Assets.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Joe E. Campbell certain real property legally described as Lot 8, SANDLEWOOD [sic] ADDITION, a subdivision in Blue Springs, Jackson County, Missouri, the 1970 Ford Wagon engine and the sum of $38,338.09, or attribute the fair market value of said property as a set off to Joe E. Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Richard Campbell the sum of $50,536.09, the 1973 Jeep CJ5 automobile, and the 1954 homemade trailer, or attribute the fair market value of said property as a set off to Richard Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Janice Campbell the sum of $37,852.95, the 1967 motorcycle, the 1968 17 foot Silvereagle trailer, the 1967 Mark Twain 120 horsepower boat and the homemade trailer frame [sic], or attribute the fair market value of said property as a set off to Janice C. Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that each party will bear their [sic] own costs of the action.

s/_____
HONORABLE JOHN A. BORRON, JR.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	No. PR89-030836-01
Respondents	)	Estate No. 30836
	)	
In the Estate of	)	
Joseph F. Campbell	)	
	)	
Deceased	)	

NOTICE OF ATTORNEY'S LIEN

COMES NOW Albert W.L. Moore, Jr., and gives notice that he has been acting as attorney for Janice C. Campbell in her above-entitled discovery of assets action brought on behalf of the above-entitled decedent's estate and that there is a balance of $54,452.73 due and owing for his services and disbursements on behalf of Petitioner Janice C. Campbell and the said estate as of the thirty-first day of January 1994. This amount and such further amounts as may accrue constitute a lien on recovery by the said estate and by Janice C. Campbell under Sections 484.130 of the Revised Statutes of Missouri, which lien is not affected by any

settlement among the parties. Payment or transfer after notice renders any paying party liable to the undersigned attorney for said lien and said lien follows the payment or transfer into the hands of the recipient thereof. This notice is without prejudice to Janice C. Campbell's objection to the settlement proposed by the Administrator ad Litem in the above-entitled adversary action; it is without prejudice to Janice C. Campbell's right to jury trial, which she continues to demand as her constitutional right, and it is without prejudice to her rights generally except as they may be specifically affected by the operation of said lien.

s/_____

Albert W.L. Moore, Jr. #18921
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of attorney's lien was mailed on this 21st day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem, and to Janice C. Campbell, 7065 East Calle Betelgeux, Tucson, Arizona 85710, Petitioner.

s/_____
Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSOURI
AT INDEPENDENCE

ALBERT W.L. MOORE, JR.,

Plaintiff, CV94-5667
Division Two
vs. Docket O

JANICE C. CAMPBELL, et al.,

Defendant.

TRANSFER ORDER

IT IS HEREBY ORDERED that the above captioned cause be transferred to Probate Division 19. Plaintiff has a pending probate matter in Division 19.

s/_____
WILLIAM W. ELY, JUDGE, DIVISION TWO

Dated: June 9, 1994

Copies to:
Civil Data 1
Civil Data 2
Civil Filing
Albert W.L. Moore
Les D. Wight
Rebbecca Lake Overman
Janice C. Campbell

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

Albert W.L. Moore, Jr.,
Plaintiff,

vs. CV94-5667

Janice C. Campbell, et al.,
Defendants.

ORDER

Now on this date, the court takes up for disposition the motion of defendant, Rebbecca L. Overman, administrator ad litem of the Estate of Joseph F. Campbell, Deceased, No. 30836, to dismiss plaintiff's petition to recover attorneys fees.

Count I of plaintiff's petition alleges that as a direct result of his efforts, the court entered judgment in favor of the administrator ad litem in an amount in excess of $200,000. He seeks judgment against all defendants for the services he rendered to Janice C. Campbell in connection with a discovery of assets action filed by him on her behalf against her two brothers who were serving as co-personal representatives of their father's estate.

Count II of plaintiff's petition seeks to foreclose the alleged lien which he asserts by reason of § 484.130 RSMo.

Count III of plaintiff's petition is described as a creditor's bill. In said count, he seeks to enjoin defendants, Overman and Joseph E. Campbell and Richard F. Campbell from any and all sales of assets and all expenditures for claims, expenses or distributions until a final probate settlement has been prepared for the estate and "approved by this Court, and then only in accordance with said final probate settlement." Plaintiff further seeks an order of the civil trial division directing defendants, Overman and Joseph E. and Richard F. Campbell to allow as part of the final settlement, plaintiff's attorneys fees. Plaintiff also seeks other equitable relief. The basis for Count III also rests upon the alleged attorney's lien, § 484.130 RSMo.

This action arose out of a discovery of assets action filed by Janice C. Campbell, decedent's daughter, against Joseph E. and Richard F. Campbell, her brothers and decedent's sons, as co-personal representatives of their father's estate. Plaintiff, Janice C. Campbell, in the discovery of assets action, asserted that her brothers were withholding assets of her father's from the estate. Because the defendants in the discovery of assets action were the co-personal representatives; because any recovery made by the plaintiff in that action would be in favor of the estate pursuant to § 473.340 RSMo and because the personal representative is an indispensable party to such an action, it became necessary for the probate division to appoint an administrator ad litem to insulate the interests of all persons interested in the estate from the conflict of interest created by plaintiff, Janice C. Campbell's action. Rebbecca L. Overman was appointed administrator ad litem to represent the interests of the estate in the discovery of assets action. As administrator ad litem, Ms. Overman represents the interests of all persons who have an interest in the estate including heirs, devisees and creditors. Kahmann v. Buck,

446 S.W.2d 457 (Mo. App. 1969). Ms. Overman, in her capacity as administrator ad litem, participated in the trial of the discovery of assets action. During the course of the trial, she worked out a settlement of the action with the defendant sons which settlement was approved by the probate division and which settlement resulted in the recovery of assets for the estate in value in excess of $200,000.

All three counts in plaintiff's petition are predicated upon an alleged attorney's lien pursuant to § 484.130 RSMo for plaintiff's services to Janice C. Campbell as plaintiff in the discovery of assets action. The first question to be resolved is whether or not plaintiff, in fact, has an attorney's lien under § 484.130 RSMo.

Carter v. Stendeback, 482 S.W.2d 534 (Mo. App. 1972) involved an action against a beneficiary of an estate and the personal representative to recover under a contingent fee contract for legal services provided to the beneficiary in connection with her claim against the estate. The trial court entered judgment in favor of the attorney and against both the beneficiary in connection with her claim against the estate. The trial court entered judgment in favor of the attorney and against both the beneficiary and the personal representative and declared the judgment to be a lien upon the beneficiary's distributive share in the estate. The appellate court held that it was error to enter judgment against the personal representative and to impose an attorney's lien against the undistributed assets of the decedent's estate. The appellate court affirmed the judgment awarding attorneys fees against the beneficiary.

Carter v. Stendeback thus stands for the proposition that plaintiff cannot assert an attorney's lien against the undistributed assets of the Campbell estate nor against the co-personal representatives in their fiduciary capacity nor against the administrator ad litem. Thus, the motion to dismiss as to defendant, Overman must be sustained. Since neither the defendant co-personal representatives nor Janice C. Campbell joined in said motion, this court's ruling does not affect their status as defendants in this action. It is, therefore,

ORDERED, ADJUDGED AND DECREED that defendant,Overman's motion to dismiss as to herself as administrator ad litem of the Estate of Joseph F. Campbell, Deceased is sustained.

Dated: 6/14/94

s/_____
Judge

cc: Albert W. L. Moore, Jr.
Les D. Wight
Rebbecca L. Overman
Janice C. Campbell

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

ALBERT W.L. MOORE, JR)		
	)	
Plaintiff	)	
	)	
v.	)	Case No. CV94-5667
	)	Docket O
	)	
JANICE C. CAMPBELL, et al.	)	
	)	
Defendants	)	

MOTION TO SET ASIDE DISMISSAL

COMES NOW Plaintiff and moves that the order of dismissal of Rebbecca Lake Overman, administrator ad litem, as party defendant to this action, dated the fourteenth day of June 1994, be set aside and held for naught, for the reasons stated in the suggestions in support of this motion filed herewith and by this reference incorporated herein and made part hereof.

s/_____
Albert W.L. Moore, Jr. #18921
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion to set aside was mailed on this fourteenth day of July 1994 to Joseph E. Campbell, 1509 50th Street North, Blue Springs, Missouri 64015, and Richard F. Campbell, 18819 East 5th Street North, Independence, Missouri 64056, Defendants, to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem, and to Janice C. Campbell, 7065 East Calle Betelgeux, Tucson, Arizona 85710, Defendant.

s/_____
Albert W. L. Moore, Jr.
Pro Se

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

ALBERT W.L. MOORE, JR)		
)		
Plaintiff)		
)		
v.)	Case No. CV94-5667	
)	Docket O	
)		
JANICE C. CAMPBELL, et al.		
)		
Defendants)		

SUGGESTIONS IN SUPPORT OF MOTION TO SET ASIDE DISMISSAL

COMES NOW Plaintiff and for his suggestions in support of his motion to set aside the dismissal of Rebbecca Lake Overman, administrator ad litem, states and shows the court as follows:

BACKGROUND

1. Plaintiff's client Janice C. Campbell, a resident of Arizona, filed a discovery of assets action in her father's estate against her brothers, Missouri residents and personal representatives of the estate, on the ninth day of May 1989 (PR89-030836-01). The brothers Campbell had caused loss and damage to their father's estate while he was alive and incompetent, and after his death. (Exhibit 1 hereto, Janice C. Campbell's second amended petition for discovery of assets, PR89-030836-01). The brothers did not apply for

letters testamentary until the thirteenth of September 1988, nearly a year after decedent passed away on the twenty-first of October 1987. After the estate was opened, they continued to appropriate estate money and property. A proper inventory was never made. In nearly six years, no annual or final settlement has been approved. The brothers Campbell have yet to account for dividend checks on decedent's Ford Motor Company stock exceeding $15,000.00 in value (Exhibit 3, paragraph 12, Exhibit 4, paragraph 2). Although Janice C. Campbell applied to the probate division for the correction and redemption of gross irregularities in her brothers' conduct of the estate, nothing was done.

2. After Plaintiff was retained on or about the twenty-first day of September 1992, the discovery of assets action was prosecuted. Plaintiff spent considerable time dealing with frivolous motions and objections by respondents in the discovery of assets action. Plaintiff sought relief from the probate division, but little was done. Plaintiff, by motion and suggestions filed the twenty-seventh day of April 1993, sought suspension of the brothers as personal representatives of the estate pending resolution of the discovery of assets action, in accordance with well-established law. On page 229 of 3 Missouri Practice, John A. Borron, Jr., states, "When an action is filed against the personal representative of the estate pursuant to Section 473.340, the authority of the personal representative must be suspended. Matter of Estate of Stickler, 551 S.W. 2d 944 (Mo. App. 1977)." The probate division appointed an administrator ad litem on the seventh of July 1993, but never suspended the brothers.

3. As the case was coming to trial, Plaintiff sought more time to prepare. A long continuance was previously given to respondents, but none was allowed Plaintiff. When Plaintiff moved to dismiss without prejudice, the probate division threatened, on utterly false and specious grounds, to dismiss with prejudice. On the day trial commenced, the probate division purported to strike from Janice C. Campbell's second amended petition for discovery of assets those portions pertaining to punitive damages, on the pretext that respondents lacked notice of the language. The utter cynicism of this action is highlighted by two facts: (1) the entire second amended petition was appended to the motion to amend when it was served on the Campbell brothers' counsel on the twenty-eighth day of November 1993, nearly two months before trial, and (2) the hearing and order to strike were over within two minutes after Janice C. Campbell's counsel was served with the motion in chambers. These partisan actions set the tone for the trial, in which the probate division judge repeatedly sought to discredit and humiliate Plaintiff and Janice C. Campbell before the jury. The administrator ad litem, a mere stake-holder, was allowed to participate in the trial as a de facto adjunct counsel for the respondent brothers and conducted herself antagonistically to Janice C. Campbell and adversely to recovery by the estate. After two and one-half days of trial before a jury, the probate division, in clear violation of Janice C. Campbell's right to trial by jury under Section 473.340.2 of the Revised Statutes of Missouri and the requirement of a written settlement agreement signed by all competent parties in interest under Section 473.085, discharged the jury. On the second day of March 1994, some five weeks later, after Janice C. Campbell's motion for mistrial (Exhibit 2) pointed out that denial of her right to jury trial was reversible error, and after Janice C. Campbell's objections to the proposed settlement pointed out the statutory prerequisite of a written

settlement agreement (Exhibit 3, paragraph 1), the probate division cheerily filed a judgment without the slightest vestige of lawful authority (Exhibit 5). Plaintiff's timely motion for new trial (Exhibit 8) was ignored. Exhibits 2, 3 and 8 stand unanswered on the record.

4. While the initial draft of the judgment had no offsets of distributive shares against the judgment, the offsets appear in the final draft and in the judgment as filed (Exhibit 5). By rejecting the much larger recovery from the brothers Campbell warranted by the evidence (Exhibit 3, paragraph 22), and by offsetting the distributive shares against the judgment amounts, the probate division intends to leave the Campbell brothers with all that they have taken from a helpless old man and his estate, and to leave Janice C. Campbell without any viable means to collect her one-third residuary bequest (Exhibit 4, paragraphs 3 and 4; Exhibit 9, paragraph 2 of the suggestions in support). In furtherance of this scheme, the administrator ad litem is failing and refusing to enforce the judgment filed in the discovery of assets action and is proceeding to liquidate and dissipate the estate. Exhibits 4, 9 and 10 also stand unanswered on the record.

5. On the eighth of February 1994, the administrator ad litem served her motion for an order to sell the estate's remaining Ford stock (PR94-030836-05). The probate division conducted a thoroughly improper hearing on the seventeenth of March 1994, and ordered the stock sold. Twenty-nine days later, Ford announced a two-for-one split. When the assets now in the probate division's hands have been dissipated, without collecting on the discovery of assets judgment, which only the administrator ad litem can enforce, there will be nothing in the hands of the probate division but an unsecured judgment from which Janice C. Campbell must collect her share of the estate and Plaintiff must collect his

compensation and expenses - if possible. By then, of course, the brothers Campbell will have long since dissipated, transformed or transferred their assets, or taken bankruptcy, or otherwise thrown up hindrances to the collection of a judgment debt. This is hardly an equitable or even-handed way to administer an estate.

6. On the fifteenth day of March 1994, Janice C. Campbell filed a claim for legal expenses incurred in the discovery of assets action. Needless to say, it has not been allowed and the record shows no reason to expect the administrator ad litem or the probate division to do so.

7. The unlawful judgment filed in the discovery of assets action (PR89-030836-01) was appealed as WD49245. The unlawful order to sell the estate's Ford stock (PR94-030836-05) was appealed as WD49312. Appeal WD49312 has been consolidated under WD49245.

8. Plaintiff filed the instant action in the civil trial division, a court of general jurisdiction. It was assigned to active civil docket O, the Hon. William W. Ely (Exhibit 12). The administrator ad litem filed a motion to dismiss, on the absurd ground that the action was the same as the one in probate. Plaintiff's suggestions in opposition pointed out the differences. None of the points in the administrator ad litem's motion is reflected in the purported order of dismissal. That order came not from division 2, where it was filed, but from the probate division; it was signed by the self-same judge who had committed the atrocities set out above. Plaintiff had received in the interim no notice of any motion to transfer, and no notice of transfer of this case to any other division, much less to a division with no jurisdiction to hear and decide it (see the discussion of jurisdiction below). In his review of the Court file on CV94-

5667 on the fifth of July 1994, Plaintiff found six or seven photocopies of a "Transfer Order" dated the ninth of June 1994, on the left side of the file folder. Plaintiff was listed as a recipient of a copy. But Plaintiff in fact received no copy until he bought one from the probate division on the fifth of July 1994. Plaintiff called Janice C. Campbell on the sixth of July 1994; she, like Plaintiff, had received a copy of the probate division order of the fourteenth of June 1994, but had never received a copy of the "Transfer Order" or any other notice of a transfer of the case. It appears, therefore, that copies of the "Transfer Order" were retained in the Court file and not distributed. Plaintiff has thereby been denied his absolute right under Rule 51.05, to change from the probate division judge, or to move for a change of judge for cause, before the said probate division judge issued his capricious, groundless and fatuous order on a matter outside his competence and jurisdiction.

JURISDICTION

9. The probate division's order of the fourteenth of June 1994 is void for lack of jurisdiction. The order is signed by the probate division judge and bears "PROBATE DIVISION" in its caption. The probate division does not cite any authority or other support for its jurisdiction to hear and to rule on the matters taken up by it in the order. Further, there is no showing that the court of general jurisdiction in which the case was filed lacked jurisdiction to hear it. The jurisdiction of the civil trial division over the case has not been seriously challenged. There is no provision in Rule 6 of the Local Rules for the transfer of cases to the probate division. The very transfer of this case to the probate division was unauthorized and improper.

10. The probate division's jurisdiction is limited by statute to "probate business" and "probate matters" (Sections 472.020 and 472.030, Revised Statutes of Missouri):

> "Matters of probate business, as commonly understood and under all the authorities, pertain to the proving of wills, the appointment of guardians and curators, and the administration and settlement of estates of decedents, incompetents and the like. 3 Words and Phrases, Perm.Ed., p. 203; 26 Words and Phrases, Perm.Ed., p. 750; 34 Words and Phrases, Per.Ed., p.59."

(State v. Arnold, 356 Mo. 661, 204 S.W.2d 254 (Mo.Banc 1947) at page 257, quoting from Downey v. Schrader, 353 Mo. 40, 44(4), 182 S.W.2d 320, 323(7)). The probate division is not a court of general jurisdiction (Webb v. First National Bank and Trust Company of Joplin, 602 S.W.2d 780 (Mo.App.S.D. 1980) at page 782). The probate division's jurisdiction does not even extend to an action on a probate administrator's bond (Matter of Estate of Woodrum, 859 S.W.2d 259 (Mo.App.S.D. 1993) at pages 261-2). The enforcement of equitable and statutory liens to protect compensation for professional services is, if anything, less of a probate matter than an action on a probate administrator's bond. The probate division in rendering the instant order is acting ultra vires. It is trying to go beyond its limited jurisdiction in purporting to dismiss an action for attorney's fee filed in a court of general jurisdiction.

ERRORS OF LAW AND FACT

11. Even if the probate division had jurisdiction, its order would be erroneous. It is rife with factual and legal error.

12. The order erroneously states that Plaintiff's entire petition rests upon an attorney's lien under Section 484.130. This is false, as a reading of Plaintiff's petition will readily show. Plaintiff's petition rests as well on a running account and, with specific reference to the administrator ad litem, on principles of equitable lien and restitution.

13. The order recites, and does not deny, that Plaintiff's efforts resulted directly in a judgment in favor of the administrator ad litem in an amount in excess of $200,000. There is a feeble effort in the order to throw some credit for the recovery to the administrator ad litem, but she in fact worked against recovery by the estate, and there is no doubt the recovery would not have occurred but for the fact that Plaintiff brought the case to trial. Plaintiff's client Janice C. Campbell was authorized to bring the action on behalf of the decedent's estate (Section 473.340.1, Revised Statutes of Missouri). A necessary concomitant of that authority is the right to hire counsel to prosecute the action. The action found Plaintiff; he was not an officious intermeddler. The probate division and administrator ad litem are contriving to deny Plaintiff his compensation while denying Janice C. Campbell reimbursement for her payments and obligations to Plaintiff necessarily incurred by her to recover assets and damages from her brothers for the estate. The actions of the probate division and administrator ad litem conduce to such a result. One is presumed to intend the natural results of one's actions. Their actions, consistent with such a scheme, have not been explained by any other

reasonable hypothesis, despite ample opportunity to address the issue (Exhibit 6, paragraphs 4 and 5, Exhibit 9, paragraph 2 of the suggestions, Exhibit 10, paragraph 3 of the suggestions). Action should be taken to stop the tawdry abuses of official position in this matter. The appropriate action by the probate division would be to allow Janice C. Campbell's claim, submitted the fifteenth of March 1994, for legal expenses as a cost of administration. Payment would moot this case pro tanto.

14. In light of the foregoing paragraph, it is apparent that the order fails to state the whole truth when it says that Plaintiff's services were rendered to Janice C. Campbell. In a discovery of assets action, as the order itself points out on the second page (Exhibit 5), the judgment is in favor of the administrator ad litem, who in turn (if she performs her function) collects it and distributes it to the beneficiaries. As the duly retained advocate for recovery by the estate, Plaintiff rendered valuable services to all named Defendants. One of those Defendants, moreover, the administrator ad litem, purported to settle with the respondents in the discovery of assets action, a classic case of deforcing the attorney's lien, which renders both sides of the purported settlement liable to the proponent's counsel (Downs v. Hodge (App. W.D. 1967) 413 S.W.2d 519).

15. In a vain effort to avoid the effect of the statutory lien, the probate division's order erroneously cites Carter v. Stendeback, 482 S.W.2d 534 (Mo. App. 1972). Thereby the author of the order displays inattention or error in analysis, if not bias. Counsel in Carter represented a beneficiary against the estate. Plaintiff herein effected recovery for the estate. Counsel in Carter was found entitled to recover from the receiving party that which the party received by counsel's efforts. That is precisely Plaintiff's

prayer. Plaintiff has used his time and talents to recover for the estate, and the estate has received benefits from Plaintiff's efforts. But Plaintiff does more, for he must deal with the fact that his ability to satisfy his rights against assets in custodia legis are limited, particularly when those having custody are bent upon denying him his fee and disbursements. The wild assertion in the last paragraph of the probate division's order that Carter stands for the proposition that Plaintiff cannot assert an attorney's lien against the Campbell estate, its personal representatives or administrator ad litem - a conclusion wholly unwarranted by the Carter facts or opinion - as well as the order's apparently deliberate disregard of the Plaintiff's equitable lien, are compelling evidence that the author of the order was determined to reach a specific conclusion, whatever the relevant facts or applicable law.

16. The probate division order is wrong when it says that Count II of Plaintiff's petition seeks to foreclose a lien under Section 484.130 of the Revised Statutes of Missouri. Count II is broad enough to include both the statutory lien and the equitable lien.

17. The statutory lien is cumulative; it does not preclude other remedies (Downs v. Hodge (App.W.D. 1967) 413 S.W.2d 519). Plaintiff herein has an equitable lien as well as the right to invoke the equitable principle of marshaling assets to hold the administrator ad litem and person representatives to an injunction and accounting under a creditor's bill.

18. As the administrator ad litem is failing and refusing to enforce the discovery of assets judgment, while wasting and dissipating the estate assets remaining in the hands of the probate division, the equity chancellor's intercession is urgently required to preserve those assets and secure Plaintiff's right to compensation; hence Count III of Plaintiff's petition prays for a creditor's bill to protect Plaintiff's equities.

19. Plaintiff's statutory and equitable liens may be enforced by equitable means, as by following the proceeds of judgment paid to another (Smoot v. Shy (1911) 139 S.W. 239, 159 Mo. App. 126). Upon a settlement, an attorney may (1) follow the proceeds (2) recover from the defendant or (3) enforce his lien against the judgment (Lawson v. Missouri & Kansas Tel. Co. (1914) 164 S.W. 138, 178 Mo. App. 124; Curtis v. Metropolitan St. R. Co. (1906) 94 S.W. 762, 118 Mo. App. 341). By the set-offs in the probate division judgment for discovery of assets, the administrator ad litem effectively receives and distributes estate assets. Under the law as stated above, Plaintiff may collect them coming and going. The precise amount of the assets distributed by this mechanism can be determined only by final settlement. The record shows that the probate division cannot be relied upon to protect the legitimate interests of Plaintiff or Janice C. Campbell in this process. Hence the intercession of the equity chancellor through the creditor's bill (Count III of Plaintiff's petition) is necessary.

20. The statement in the order that Count III rests upon Section 484.130 is false. The author of the order sets up a straw man to try to knock down. Count III covers more than the statutory lien. The petition points out that a benefit was conferred on the estate by Plaintiff's authorized efforts, and all parties were on notice of Plaintiff's interests (Exhibit 6). The creditor's bill is to alleviate the inadequacies of the legal remedy under the circumstances.

21. The probate order is less than candid about the discovery of assets action. Janice C. Campbell alleged not only a withholding of assets by her brothers but also the taking and dissipation of assets and grave damage to the decedent's estate by the imprudent sale, waste and gross mismanagement of decedent's assets while he was incompetent and after his demise (Exhibit 1). The probate division has unlawfully thwarted jury trial of these matters by accepting without legal authority the administrator ad litem's oral motion for settlement in mid-trial, in flagrant violation of Section 473.085 of the Revised Statutes of Missouri, which makes "an agreement in writing ... executed by all competent persons ... having beneficial interests ..." a clear, absolute and unqualified prerequisite to judicial approval, and in flagrant violation of Janice C. Campbell's right to a jury trial of her cause (Exhibits 2, 3 and 8).

22. The probate order's treatment of the appointment and authority of the administrator ad litem, in the paragraph concluding the first page of the order and continuing to the second, warrants some comment. The paragraph says that the administrator ad litem was appointed to insulate the parties from conflicts of interest created by Janice C. Campbell's discovery of assets action. This betrays a continuing bias against Janice C. Campbell and in favor of her brothers. The brothers were defendants in their sister's

action because they took, damaged, dissipated and destroyed a large portion of their father's estate while he was incompetent or deceased. The law required their replacement as personal representatives out of elemental fairness to her. On page 229 of 3 Missouri Practice, John A. Borron, Jr., states, "When an action is filed against the personal representative of the estate pursuant to Section 473.340, the authority of the personal representative must be suspended. Matter of Estate of Stickler, 551 S.W. 2d 944 (Mo. App. 1977)." In fact, the probate division never suspended the brothers, and at least one of them continued to deposit dividend checks on their father's Ford stock in the brother's personal account. The brother has deposited estate property in his personal account and submitted, as vouchers substantiating claims against the estate, checks written against the same account. As of the seventeenth day of March 1994, the brothers had not accounted to the administrator ad litem appointed on the seventh of July 1993. It should be noted that the administrator ad litem's conduct of her office was in breach of her obligation to represent all legatees fairly and even-handedly, in that she worked to reduce recovery to the estate and against the interests of Janice C. Campbell, a one-third beneficiary of the estate. Since the administrator ad litem's appointment on the seventh day of July 1993, she has filed no annual or final settlement. Whatever the authority and obligations of the administrator ad litem, however, no legal authority has been found by Plaintiff, or cited to him by anybody, that gives the administrator ad litem the power, with or without probate division approval, to deny Janice C. Campbell's duly demanded jury trial, or to disregard Section 473.085 of the Revised Statutes of Missouri in proposing a settlement of an adversary action. The author of the probate order has vainly sought to paper over his plain errors in the discovery of assets action.

23. It is of course absurd to deem the administrator ad litem the real party of interest, as the subject order tries to do. The real parties in interest are the legatees. But even if she were the real party in interest, whatever that term might be intended to mean in this context, she would remain subject to the constitutional and statutory requirements of jury trial and written settlement agreements signed by all parties having beneficial interests. Moreover, even if the administrator ad litem has, as claimed by the probate division, settled discovery of assets case, she is subject to the statutory and equitable consequences of her actions, including liability to Plaintiff under Downs v. Hodge and other authorities cited herein.

VIOLATIONS OF CONSTITUTIONAL RIGHTS

24. The clandestine transfer of this case by division 2 and the subsequent filing of the order by the probate division deprived Plaintiff of a hearing on the subject of probate division jurisdiction, deprived Plaintiff of a hearing by a judge with jurisdiction, deprived Plaintiff of his unqualified right to a change of judge without cause, deprived Plaintiff of notice of a purported transfer made without authority, and subjected Plaintiff's interests, without notice or opportunity to be heard, to a judge with interests in the subject matter previously demonstrated to be adverse to those of Plaintiff. Hence Plaintiff has been denied due process of law under the fifth and fourteenth amendments to the Constitution of the United States of America and Article 1, Section 10 of the Missouri Constitution. The probate division judge acted under color of and contrary to law and outside his jurisdiction willfully to deprive Plaintiff of Plaintiff's constitutional rights under 42 U.S.C. Section 1983 (15 Am. Jur. Civil Rights Section 16).

WHEREFORE, Plaintiff prays this Court set aside and hold for naught the order of the probate division dated the fourteenth of June 1994 purporting to dismiss Rebbecca Lake Overman, administrator ad litem, from this action.

s/_____
Albert W.L. Moore, Jr. #18921
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion to set aside was mailed on this fourteenth day of July 1994 to Joseph E. Campbell, 1509 50th Street North, Blue Springs, Missouri 64015, and Richard F. Campbell, 18819 East 5th Street North, Independence, Missouri 64056, Defendants, to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem, and to Janice C. Campbell, 7065 East Calle Betelgeux, Tucson, Arizona 85710, Defendant.

s/_____
Albert W. L. Moore, Jr.
Pro Se

IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

JANICE C. CAMPBELL Post Office Box 13531 Tucson, Arizona 85732-3531 Petitioner vs. JOSEPH E. CAMPBELL, et al. 1509 50th Street North Blue Springs, Missouri 64015 and RICHARD F. CAMPBELL 18819 East 5th Street North Independence, Missouri 64056 Respondents In the Estate of Joseph F. Campbell Deceased	)	No. PR89-030836-01 Estate No. 30836

Exhibit 1
A-127

SECOND AMENDED PETITION FOR DISCOVERY OF ASSETS

COMES NOW Petitioner Janice C. Campbell by her attorney Albert W.L. Moore, Jr., and for her second amended petition for discovery of assets states and shows the Court as follows:

1. Petitioner is one of the heirs of the Decedent Joseph F. Campbell and a legatee under the terms of his will in the above estate, in which letters testamentary were issued on November 3, 1988.

2. Respondents are the co-personal representatives in the above estate in this Court and legatees under said will.

3. From a point in time not later than 1983 until his death on October 21, 1987, Decedent was of unsound mind and was incapable of contracting or of managing his affairs and lacked the mental capacity to give a gift or otherwise perform an act having legal effect.

4. From a point in time not later than 1983 until his death on October 21, 1987, Decedent was in feeble health, mentally weak and infirm, and was subject to, and susceptible to, being led by attention and was easily influenced.

5. During the period of time described in paragraph 4 above, Respondents completely dominated Decedent and ran his affairs.

6. From a point in time preceding the year 1983 until Decedent's death on October 21, 1987, Respondents enjoyed a confidential and fiduciary relationship with Decedent, by which Respondents set out to and did induce Decedent to cooperate in one or more of the transactions set out below.

7. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents caused certain property of Decedent and interests in the property of Decedent (more fully set out below) to be sold, or to be transferred without due consideration to one or both of the Respondents herein.

8. When Decedent's health deteriorated in 1983, Respondents caused joint bank accounts to be opened in the names of Decedent and one or both of Respondents.

9. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, income, benefits and other receipts accruing to Decedent were deposited into the joint bank accounts described in paragraph 8 above and disbursed by one or both of the Respondents.

10. On or about August 11, 1986, funds of Decedent were used to purchase real estate described as Lot 8, Sandalwood, a subdivision in Blue Springs, Jackson County, Missouri, for Respondent Joseph E. Campbell.

11. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents caused the sale of real estate owned by Decedent situated on the Lake of the Ozarks, Missouri, Cedar Point Lot No. 2, and thereby injured the Decedent's estate.

12. On or about March 18, 1986, Respondents sold 654 shares of Decedent's Ford Motor Company common stock and thereby injured the Decedent's estate.

13. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents used Decedent's funds to purchase motor vehicles for individuals other than Decedent.

14. During one or more of the periods of time described in paragraphs 3, 4 and 6 above, Respondents took property of Decedent for which they have made no accounting, the exact description which is unknown to Petitioner.

16. After Decedent's death on October 21, 1987, Respondents took property of Decedent properly a part of Decedent's probate estate for which they have made no accounting, the exact description of which is unknown to Petitioner.

17. Respondents' actions in the premises were outrageous because of their evil motive or reckless indifference to the rights of others.

WHEREFORE, Petitioner prays that the Court discover the property belonging to Decedent, determine the title and right of possession thereto, determine the persons who have an interest in said property together with the nature and extent of such interest and direct the delivery or transfer of said property to an administrator de bonis non of the estate of Joseph F. Campbell, deceased, appointed by the Court and render judgment against Respondents and in favor

of said administrator de bonis non for all losses, expenses and damages to the above-captioned estate, including punitive damages and interest as provided by law, and for such other relief as is just and proper.

s/_____
Albert W.L. Moore, Jr. #18921
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

AFFIDAVIT OF JANICE C. CAMPBELL

STATE OF ARIZONA)
) SS.
COUNTY OF PIMA)

Affiant Janice C. Campbell, having first been duly sworn, states that the foregoing is true to the best of her knowledge.

s/_____
Janice C. Campbell

Subscribed and sworn to before me this 5th day of January, 1994.

s/_____
Notary Public

My Commission Expires:

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT,PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	Estate No. 30836
	)	
	)	
Deceased	)	

MOTION FOR MISTRIAL

COMES NOW Petitioner Janice C. Campbell and moves for mistrial and an order of the Court that the above-captioned cause be tried before a jury, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

s/

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for mistrial was mailed on this 6th day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____
Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT, PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	Estate No. 30836
	)	
	)	
Deceased	)	

SUGGESTIONS IN SUPPORT OF MISTRIAL

COMES NOW Petitioner Janice C. Campbell and for her suggestions in support of her motion for mistrial states and shows the Court as follows:

1. The Court peremptorily discharged the jury in the midst of the Petitioner's presentation of her case. Denying a jury trial of this cause without Petitioner's express consent violates Article 1, Section 22(a) of the Constitution of the State of Missouri, which guarantees trial by jury.

2. Section 473.340,2 of the Revised Statutes of Missouri allows any party to demand a jury trial in an action to discover assets. The only reasonable interpretation of the right to demand a jury trial is that the demanding party actually receive a jury trial. Petitioner demanded a jury trial and in fact a jury trial proceeded for over two days before the Court discharged the jury. In the interim, Petitioner had established a prima facie case for the decedent's incapacity. Petitioner has been denied her right to a jury's determination of incapacity and to present to the jury for its decision a large body of evidence of transfers from the decedent's estate during the period of decedent's incapacity.

3. It is reversible error for a trial court to deny a jury trial demanded in a discovery of assets action (In re Estate of Fugett, 564 S.W.2d 628 (Mo.App., Kansas City District, 1978).

WHEREFORE, Petitioner prays this Court declare a mistrial and order a new trial of this cause before a jury as demanded by Petitioner.

s/_____

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for mistrial was mailed on this 6th day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/
Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT, PROBATE DIVISION

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	Estate No. 30836
	)	
	)	
Deceased	)	

OBJECTIONS TO PROPOSED SETTLEMENT

COMES NOW Petitioner Janice C. Campbell by her attorney Albert W. L. Moore, Jr., and for her objections to the proposed settlement from the Administrator ad Litem states and shows the Court as follows:

1. These objections are without prejudice to Petitioner's pending motion for mistrial in the above-captioned case. The Court's precipitate and appalling discharge of the jury in the midst of Petitioner's presentation of her case denies her the jury trial duly demanded by her under Section 473.340.2 of the Revised Statutes of Missouri and guaranteed by Article 1, Section 22(a) of the Constitution of the State of Missouri. The implementation of Section 473.085 of the Revised Statutes of Missouri requires "an agreement in writing ... executed by all competent persons ... having beneficial interests ...." Petitioner has not executed any such agreement in writing, or concurred in any agreement of any kind. Petitioner has not waived her tight to a jury trial, and continues to demand and insist upon the same. The purpose of these objections is simply to inform the Court.

2. Petitioner objects to the making of any settlement proposal by the Administrator ad Litem. The Administrator ad Litem has never been joined as a party to the action; hence she has no standing to participate in the trial or to propose settlement.

3. The settlement proposal suppresses recovery by the estate and discriminates against Petitioner; it is therefore contrary to the fiduciary obligations of the Administrator ad Litem to collect the entire estate and to treat all beneficiaries fairly and impartially.

4. The Administrator ad Litem takes August 1983 as the beginning date of decedent's incapacity. The evidence shows that decedent became incompetent at least as early as the first of April 1983. Hence transfers from this date must be returned to the estate.

5. Salient items of the Administrator ad Litem's proposal are analyzed below. The effective rates in the proposal vary widely, to the benefit of the Respondents and to the detriment of Petitioner and the estate. Here, as throughout the trial, the Administrator ad Litem is tantamount to co-counsel for Respondents. All calculations in these objections are at 9% annum compounded monthly. The calculation herein may be stated at a different rate, but the same should apply to all.

6. The first item of the Administrator ad Litem's proposal is the return to the estate of Lot 8, Sandalwood, Blue Springs, Missouri. Some $61,000 of the decedent's money went into the purchase of that property in March of 1986. About $47,000 came from the sale of 654 shares of decedent's Ford Motor Company common stock; the remaining $14,000 came from other funds of decedent. Reverse amortization of these amounts at the 9% legal rate of interest, compounded monthly, produces a present value of $28,900.00 plus $97,021.53, or $125,921.53 (Tab 1). To the extent sales proceeds from the realty fall short of the $125,921.53 figure, Joseph E. Campbell should be additionally charged with the difference as an injury to the estate from his use of estate money to purchase realty.

7. The second item of the Administrator ad Litem's proposal is Standard State Bank Checking Account 200 243 4. This account was apparently funded entirely with the decedent's money. Joseph E. Campbell wrote 788 checks against this account from 1983 to decedent's death on the twenty-first of October 1987. Of the 788 checks, at least 527 are questionable. Photocopies of the 527 are at Tab 2. In light of the checks shown at Tab 2, the amount of $4,022.09 adduced by the Administrator ad Litem is ludicrous. It can stem only from a strong bias in favor of Respondents. The annual sums of questionable checks shown at Tab 2 follow:

YEAR	TOTAL
1983	$13,529.92
1984	$19,203.15
1985	$13,979.24
1986	$5,234.39
1987	$4,390.44

To reach a present value, reverse amortizations were run on each of the annual totals from the last day of each respective year; the grand total is $125,876.13 (Tab 3). This is conservative, as additional transfers from the account were made after decedent's death.

8. The proposal fails to consider checks drawn by Respondent Joseph E. Campbell against Standard State Bank Money Market Account 600 958 1. This account appears to have been funded entirely by decedent's money during the period of his incapacity. The only signatory on the account was Respondent Joseph E. Campbell. Checks drawn against the account by Respondent Joseph E. Campbell include number 101 dated the twenty-fifth of October 1985 to Midland Bank (where Respondent Joseph E. Campbell banked) for $6,222.75 in respect of commercial loan #1022168, check number 102 for $1,650.00 dated the eleventh of November 1985 and payable to Midland Bank, check number 103 for $1,000.00 dated the twenty-ninth of November 1985 and payable to Standard State Bank, check number 104 for $1,000.00 dated the second of December 1985 and payable to Midland Bank, check number 105 for $7,000.00 payable to Midland Bank and dated the thirteenth day of March 1986, check number 106 dated the nineteenth of March 1986 for $500.00 to Midland Bank, check number 107 for $300.00 dated the twenty-fourth of March 1986 and payable to Midland Bank, check number 113 dated the fourteenth of April 1986 to Jackson National Life in the amount of $1,250.00 for an IRA contribution, check number 116 dated the sixteenth of March 1987 for $1,000.00 cash, check number 117 for $500.00 payable to Midland Bank and dated the twentieth of March 1987, check number 118 dated the eleventh of April 1987 and payable to Jackson National Life Insurance Co. for $2,250.00 for J. E. Campbell IRA accounts, check number 119 to Midland Bank for $500.00 dated the twenty-third of April 1987, check number 120 dated the first of June 1987 for $3,500.00 to Altronic, Inc. (Respondent Joseph E. Campbell's company) for the purchase of a Ford Bronco II (presumably the Ford Bronco II currently driven by Joseph E. Campbell and excluded from

the Administrator ad Litem's proposal). Copies of these checks were given to the Administrator ad Litem, but she ignored them, as well as the items purchased by them, such as the Ford Bronco II and the IRA accounts. This is further evidence of her preferring the Respondents over her fiduciary obligations. The raw total of these checks comes to $26,672.75. The total present value of these past transfers, as shown by the reverse amortizations at Tab 4, is $54,185.82.

9. The proposal fails to take into account autos transferred to Joseph E. Campbell of a value, by his own admission, of $17,436.64 (1989 balance sheet from Roger J. Tilling, Petitioner's Exhibit 19, Tab 17 hereto). The present value of $17,436.64 transferred on the thirty first day of December 1989 is about $25,716.13 (Tab 5).

10. With regard to Item 3 of the proposal, the present value of the $10,000.00 certificate of deposit distributed to Respondent Richard F. Campbell on the second day of May 1986, calculated under the uniform assumptions employed herein, is $20,336.70 (Tab 6).

11. Item 7 of the proposal sets a value of $1,500.00 on the 1973 Jeep transferred to Richard F. Campbell. Respondents, however, admit a value of $5,750.00 for automobiles (sic) transferred to Richard F. Campbell (1989 balance sheet at Tab 17). The Administrator ad Litem fails to add the considerable estate funds spent on the Jeep, which are among the questionable checks at Tab 3, on the absurd theory that the Jeep is coming back to the estate and without regard to the fact that Respondent Richard F. Campbell has enjoyed the use of the vehicle for many years. To the extent

proposal discriminates against Petitioner by charging her with interest on the alleged value of the Dodge she received while disregarding interest on the Jeep received by Respondent Richard F. Campbell. At Tab 7 appears a reverse amortization on the Jeep based on a conservative valuation of $2,500.00, which results in a present value chargeable to Respondent Richard F. Campbell in the amount of $6,703.23.

12. Item 12 of the Administrator ad Litem's proposal fails to add an interest factor to the Ford Motor Company dividend checks appropriated by Respondents to themselves. It also fails to specify the dates of the dividends so appropriated. This information is necessary to calculate the present value of the dividends taken by Respondents. It is also necessary to account for all of the approximately 45 Ford dividends paid since 1982, in order to confirm that the amounts specified in item 12 are correct.

13. Item 13 of the Administrator ad Litem's proposal, on rent paid to Petitioner, should be rejected. On no fewer than three occasions, Respondents pointed out to the Court that the rent was paid to Petitioner to compensate her for the expenditure if estate funds purportedly on 1928 Ash (Tab 8). The Administrator ad Litem's proposal would charge Petitioner for the rent, plus interest, without charging Respondents for the countervailing expenditures or for interest on them. Moreover, the effective rate used to calculate interest in item 13 of the proposal is nearly twice that used to calculate interest on monies charged against Respondents - further evidence of the Administrator ad Litem's bias in this matter. A proper calculation of interest, on the uniform principles applied herein, appears at Tab 9.

Petitioner does not concede, however, that the rent should be returned, given the Respondents' representations in the filings at Tab 8.

14. The calculation of interest on item 14 of the proposal, on the uniform basis utilized herein, appears at Tab 10. The present value comes out to $21,428.70, chargeable to Respondents.

15. It is erroneous to suggest that Petitioner received a $10,000.00 certificate of deposit, as the Administrator ad Litem does in item 15 of her proposal. Both of Petitioner's certificates of deposit were turned in. Respondent Joseph E. Campbell did obtain a Dodge for Petitioner, which he turned over to her after driving it himself for two months. He assigned a value to that vehicle of $6,929.69 on the 1989 balance sheet comprising part of Petitioner's Exhibit 19, the Tilling report (Tab 17). Taking the $10,000.00 now claimed as the value of the Dodge, however, the present value as calculated on the uniform basis used herein appears at Tab 11. It comes to $23,264.38

16. As to item 16 of the proposal, the present value is $20,642.90, chargeable to Joseph E. Campbell; see Tab 12.

17. As to item 17 of the proposal, the present value is $24,513.58, chargeable to Respondent Richard F. Campbell; see Tab 13.

18. As to item 18 of the proposal, the present value is $21,589.42, chargeable to Respondent Richard F. Campbell; see Tab 14.

19. The Administrator ad Litem's proposal fails to include the great damage done to the estate by the sale of 654 shares of Ford Motor Company common stock in March of 1986. A three-for-one [sic] stock split (or 50% stock dividend) occurred on the second of June 1986; this would have added 327 more shares. A two-for-one stock split occurred on the twelfth of January 1988; this would have added another 981 shares (654 + 327 = 981) for a total of 1,962 shares. These would have been in addition to the 980 shares in the estate stemming from the 327 shares not sold (327 + 163 + 490 = 980). Had the 654 shares not been sold, the estate would have had 2,942 shares (1,962 + 980 = 2,942) instead of the 980 shares currently held by the Administrator ad Litem. At a market value of $65.00 per share, the additional 1,962 shares would be worth $127,530. Hence the estate has been damaged to the tune of $80,530.00 ($127,530.00 - $47,000.00 proceeds of the sale of 654 shares = $80,530.00). See Tab 15. Moreover, the estate lost the dividends that would have been paid on the 1,962 shares. See the calculation of the present value of lost dividends at Tab 16. It amounts to $46,570.47. Hence the total damage to the estate from the sale of the Ford stock is $127,100.47 ($80,530.00 + $46,570.47 = $127,100.47). There is no double counting of damages, for the $47,000.00 in proceeds from the sale has been deducted in the foregoing computations. The subsequent misappropriation of the $47,000.00 is discussed in paragraph 6 above.

20. The settlement proposal fails to take into account $2,000.00 in appreciation on the lake shore property sold in 1984. The proceeds of sale are traced into certificates of deposit treated above.

21. The proposal fails to take into account some $60,000.00 in legal expenses incurred by Petitioner to bring Respondents to the point of a settlement proposal, however flawed. Respondents' tactics have been aimed at running up Petitioner's legal costs; Respondents, not Petitioner, should bear the burden of such nonsense. Petitioner's legal costs incurred on behalf of the estate more than offset amount allegedly chargeable to her.

22. In summary, the Respondents should return at least the following to the estate:

Blue Springs realty	$75,000.00
Excess of injury to the estate, from expenditure of $61,000.00 on Blue Springs realty, over current value of realty	$50,921.53
Present value of questionable checks drawn against Standard State Bank Account 200 243 4	$125,876.13
Present value of questionable checks drawn against Standard State Bank Account 600 958 1	$54,185.82
Present value of automobiles transferred to Joseph E. Campbell	$25,716.13
Present value of certificate of deposit #890076	$20.336.70
Present value of Jeep assuming a value of $2,500.00	$6,703.23

Present value of certificate of deposit #10510	$21,428.70
Present value of certificate of deposit #12825	$20,642.90
Present value of certificate of deposit #13443	$24,513.58
Present value of certificate of deposit #10859	$21,589.42
Present value of 1,962 shares that should be in the estate, less $47,000.00 proceeds of sale of 654 shares	$80,530.00
Present value of dividends lost by sale of 654 shares	$46,570.47
Cash dividends appropriated by Respondents	$7,350.00
Appreciation of lake shore property sold in 1984	$2,000.00
	$583,364.61

The foregoing comments and objections are without prejudice to Petitioner's right to assign other and additional loss and damage to the estate. In particular, the full extent of checks written and the present value of cash dividends appropriated by Respondents remain open.

WHEREFORE, Petitioner prays this Court reject the spurious proposal of the Administrator ad Litem and correct its error in precipitately and unlawfully discharging the jury by setting a date for the trial of this cause by a duly selected jury.

s/

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objections to proposed settlement was mailed on this 8th day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	No. PR94-030836-05
Respondents	)	Estate No. 30836
	)	
In the Estate of	)	
Joseph F. Campbell	)	
	)	
Deceased	)	

RESPONSE TO PETITION FOR ORDER TO SELL PERSONAL PROPERTY

COMES NOW Petitioner Janice C. Campbell by her attorney Albert W. L. Moore, Jr., and for her response to the petition of the Administrator ad Litem for an order to sell personal property states and shows the Court as follows:

1. The Administrator ad Litem is a mere stakeholder who has never been joined as a party to the above entitled adversary action, in which she now presumes to file a petition. As neither a party nor disclosed attorney for any party, she has no standing to file the petition in the said action.

2. It is not in the interests of the estate to sell the most valuable and productive asset currently in the hands of the Administrator ad Litem. The Ash Street property has cost the estate money. The Blue Springs property has appreciated at less than 3% per year since 1986. The 327 shares of Ford stock worth some $23,500 in 1086, however, have grown to 980 shares worth some $63,700, and in the meantime the following dividends have been paid:

Div. No.	Payable Date	$/Share	# of Shares	Amount Payable
116	1 March 86	.70	327	$228.90
117	2 June 86	.825	327	$269.77
118	2 Sept 86	.55	490	$269.50
119	1 Dec 86	.65	490	$318.50
120	2 March 87	.65	490	$318.50
121	1 June 87	.75	490	$367.50
122	1 Sept 87	.75	490	$367.50
123	1 Dec 87	1.00	490	$490.00
124	1 March 88	.50	980	$490.00
125	1 June 88	.60	980	$588.00
126	1 Sept 88	.60	980	$588.00
127	1 Dec 88	.60	980	$588.00
128	1 March 89	.75	980	$735.00
129	1 June 89	.75	980	$735.00
130	1 Sept 89	.75	980	$735.00
131	1 Dec 89	.75	980	$735.00
132	1 March 90	.75	980	$735.00
133	1 June 90	.75	980	$735.00
134	1 Sept 90	.75	980	$735.00
135	1 Dec 90	.75	980	$735.00
136	1 March 91	.75	980	$735.00

137	1 June 91	.40	980	$392.00
138	3 Sept 91	.40	980	$392.00
139	2 Dec 91	.40	980	$392.00
140	2 March 92	.40	980	$392.00
141	1 June 92	.40	980	$392.00
142	1 Sept 92	.40	980	$392.00
143	1 Dec 92	.40	980	$392.00
144	1 March 93	.40	980	$392.00
145	1 June 93	.40	980	$392.00
146	1 Sept 93	,40	980	$392.00
147	1 Dec 93	.40	980	$392.00
				$15,811.17

(See Tab 15 of Petitioner's objections to proposed settlement.) From 327 shares that were themselves a stock dividend, the estate has roughly $80,000 of market value and cash dividends. If the present value of the dividends were calculated, the total would be significantly greater. Moreover, the price per share of Ford stock is approaching the level at which it has previously split. Prospects seem bright. Ford made two and a half billion dollars in 1993. A dividend is expected in early March. Pending the appeal and possible re-trial of the above-entitled adversary action, dividends and stock appreciation could provide the only practicable way to pay ongoing expenses of administration.

3. It is premature and inappropriate to sell the most valuable and productive assets in the hands of the Administrator ad Litem, for claims and expenses could render the estate bankrupt and force a pro-rata payment of claims. Until the entire estate is collected, no claim should be paid.

4. Selling the stock to pay claims at this stage flies in the face of the principle of marshaling assets.

> In general usage, the term "to marshal" means to arrange in order; and in the sense in which it is used in courts of equity, it means to arrange different funds under administration so that all parties having equities thereon may receive their due proportions.

(See 53 Am.Jur. Marshaling Assets Section 1.) As the evidence submitted with Petitioner's objections to proposed settlement make clear, Respondents have already made off with most of the estate. Most of what they have taken has been further transferred or dissipated. Using the liquid assets in the hands of the Administrator ad Litem to pay claims, many of which will be made by Respondents and their ally the Administrator ad Litem, would leave Petitioner as the distributee of a predominantly unsecured judgment against Respondents, who could then take bankruptcy. This would effectively defeat decedent's express testamentary intent to divide his estate equally among the three children. Section 474.430 of the Revised Statutes of Missouri requires that all courts and others concerned in the execution of last wills shall have due regard to the true intent and meaning of the testator in all matters brought before them. Claims should be paid from Respondents' repayments to the estate, not from assets held by the Administrator ad Litem, which may be the only hope for Petitioner to recover her legacy.

5. The Court has wisely maintained the known assets of the estate in statu quo pending the outcome of the action for discovery of assets. As the probable judgment will be appealed, this posture should be maintained until final resolution of the appeal and, if applicable, final resolution after a new trial.

WHEREFORE, Petitioner prays the Court dismiss the Administrator ad Litem's petition for order to sell personal property, and requests a hearing or opportunity to apply for a writ before the order to sell issues.

s/

Albert W. L. Moore, Jr. #18921
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Janice C. Campbell, having ben duly sworn, states that the foregoing is true to the best of her knowledge and belief.

s/
Janice C. Campbell

Subscribed and sworn to before me the undersigned notary public this twenty-second day of February 1994.

s/
Notary Public
Peggy Matthews

My Commission Expires:

June 17, 1994

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing response to petition for order to sell personal property was mailed on this twenty-second day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/
Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL,	)	
et al.,	)	
	)	
Respondents,	)	
	)	
In the Estate of	)	
Joseph F. Campbell,	)	
	)	
[redacted]ceased.	)	

JUDGMENT ENTRY

On the 27th day of January, 1994, this Court took up the [redacted]l motion of Rebbecca Lake Overman, administrator ad litem, to compromise and settle the claims arising from Plaintiff's Second Amended Petition to Discover Assets and Defendants' Cross-Petition to Discover Assets; and having heard the evidence and being advised in the premises the Court took this matter under advisement pending the furnishing of a judgment entry.

Now on this 2 day March, 1994, this Court again takes up the Administrator ad Litem's motion and makes the following findings of fact:

Between August 1, 1983 and October 21, 1987 the decedent, Joseph F. Campbell, transferred certain assets into the names of one or more of the parties.

There exists an issue of fact as to whether the decedent was totally incapacitated as a result of Alzhéimer's disease and unable to make decisions regarding disposition of his assets from his entry into a nursing home in 1983 until his death on October 21, 1987.

The Administrator ad Litem reasonably believes that during the period of his incapacity, the decedent with assistance from the Defendants sold 654 shares of stock in Ford Motor Co. Inc. and used the proceeds from said sale to have a home built on Lot 8, SANDLEWOOD [SIC] ADDITION in Blue Springs, Missouri for the purpose of providing a residence for the plaintiff.

Plaintiff Campbell asserts that the 654 shares of Ford Motor Company stock should not have been sold and that had said stock not been sold, the estate would be entitled to the appreciation in the value of the stock due to stock splits and an increased market value and the dividends that would have been paid from the date of sale to the date of trial.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the plaintiff received $16,800.00 in rental income from the decedent's real property at 1928 1/2 Ash Street in Independence, Missouri.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred three certificates of deposit totalling $30,000 into the name of defendant, Richard Campbell.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred two certificates of deposit into the name of defendant, Joe E. Campbell.

The Administrator ad Litem reasonably believes that during the period of his incapacity the decedent with assistance from the Defendants transferred one certificate of deposit into the name of plaintiff, Janice Campbell.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the defendant's [sic] paid to themselves or others for their exclusive benefit certain monies from the decedent's checking account. Defendant, Richard Campbell received $2,244.26 and defendant, Joe E. Campbell received $1,777.21 from said account.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity the plaintiff took possession of a 1967 Motorcycle, a 1968 seventeen foot Silvereagle trailer, a 1967 Mark Twain 120 horsepower boat, and a homemade frame trailer.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity, the defendant, Richard Campbell took possession and title to a 1973 Jeep CJ5 and a homemade trailer.

The Administrator ad Litem reasonably believes that during the period of the decedent's incapacity, the defendant, Joe E. Campbell took possession and title to a 1970 Ford wagon engine.

The Administrator ad Litem reasonably believes that following the death of the decedent, defendant, Richard Campbell received $1,813.00 in proceeds from certain dividends from Ford Motor Co. Inc. which were in the decedent's name alone.

The Administrator ad Litem reasonably believes that following the death of the decedent, defendant, Joe E. Campbell received $5,537.00 in proceeds from certain dividends from Ford Motor Co. Inc. which were in the decedent's name alone.

The Administrator ad Litem reasonably believes that further litigation of the disputed issues is not likely to result in any additional advantage to the estate and is not economically feasible.

The Administrator ad Litem recommends that the following assets be found to be assets of the Estate of Joseph F. Campbell:

> Lot 8, SANDLEWOOD [sic] Addition, a subdivision in Blue Springs, Jackson County, Missouri.
>
> Refund from Richard Campbell in the sum of $4,244.26 to Standard State Checking Account # 2002434.

Refund from Joe E. Campbell in the sum of $1,777.21 to Standard State Checking Account # 2002434.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,037.50 for prior distribution of C. D. #890076 at Standard State Bank.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $6,337.50 for prior distribution of C. D. #13443 at Standard State Bank.

Refund from Richard Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $4,820.83 for prior distribution of C. D. #10859 at Standard State Bank.

Refund from Joe E. Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,200.00 for prior distribution of C. D. #12825 at Standard State Bank.

Refund from Joe E. Campbell in the sum of $10,000.00 plus interest at the rate of 6.5% in the sum of $5,416.66 for prior distribution of C. D. #10510 at Standard State Bank.

Refund from Janice Campbell in the sum of $10,000.00 plus

interest at the rate of 6.5% in the sum of $6,012.50 for prior distribution of C. D. #10881 at Standard State Bank.

Return from Janice Campbell of 1967 Motorcycle valued at $100.00, a 1968 17 foot Silvereagle trailer valued at $150.00, a 1967 Mark Twain 120 horsepower boat valued at $150.00, and a homemade frame trailer valued at $200.00.

Return from Joe E. Campbell a 1970 Ford Wagon engine valued at $200.00.

Refund from Janice Campbell of $750.00 from proceeds from sale of household goods.

Refund from Richard Campbell of $175.00 for value of household goods previously distributed to him.

Refund from Joe E. Campbell of $75.00 for value of household goods previously distributed to him.

Refund from Richard Campbell of $1,813.00 for proceeds from Ford Motor Co. Inc. stock dividends plus interest accrued at the rate of 3% in the sum of $108.00.

Refund from Joe E. Campbell of $5,537.00 for proceeds from Ford Motor Co. Inc. stock dividends plus interest accrued at the rate of 3% in the sum of $332.22.

Refund from Janice Campbell of $16,800.00 for proceeds of rental income from real property located a [sic] 1928 1/2 Ash Street, Independence, Missouri plus interest at the rate of 6.5% in the sum of $4,290.45.

The settlement proposed by the Administrator ad Litem appears to fairly affect the rights of all parties, is a reasonable compromise of the controversy, and is in the best interest of the estate.

The Defendants have consented to the settlement offered by the Administrator ad Litem.

NOW, THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED that the settlement offered by the Administrator ad Litem be and it is hereby accepted as a fair and reasonable compromise of the controversy raised in Plaintiff's Second Amended Petition to Discover Assets and the Defendants' Cross-Petition to Discover Assets.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Joe E. Campbell certain real property legally described as Lot 8, SANDLEWOOD [sic] ADDITION, a subdivision in Blue Springs, Jackson County, Missouri, the 1970 Ford Wagon engine and the sum of $38,338.09, or attribute the fair market value of said property as a set off to Joe E. Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Richard Campbell the sum of $50,536.09, the 1973 Jeep CJ5 automobile, and the 1954 homemade trailer, or attribute the fair market value of said property as a set off to Richard Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that Rebbecca Lake Overman, in her capacity as Administrator ad Litem for the Estate of Joseph F. Campbell have and recover from Janice Campbell the sum of $37,852.95, the 1967 motorcycle, the 1968 17 foot Silvereagle trailer, the 1967 Mark Twain 120 horsepower boat and the homemade trailer frame [sic], or attribute the fair market value of said property as a set off to Janice C. Campbell's distributive share of the estate, and in default thereof let execution issue.

IT IS FURTHER ORDERED that each party will bear their [sic] own costs of the action.

s/

HONORABLE JOHN A. BORRON, JR.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	
	)	
JOSEPH E. CAMPBELL, et al.	)	
	)	No. PR89-030836-01
Respondents	)	Estate No. 30836
	)	
In the Estate of	)	
Joseph F. Campbell	)	
	)	
Deceased	)	

NOTICE OF ATTORNEY'S LIEN

COMES NOW Albert W.L. Moore, Jr., and gives notice that he has been acting as attorney for Janice C. Campbell in her above-entitled discovery of assets action brought on behalf of the above-entitled decedent's estate and that there is a balance of $54,452.73 due and owing for his services and disbursements on behalf of Petitioner Janice C. Campbell and the said estate as of the thirty-first day of January 1994. This amount and such further amounts as may accrue constitute a lien on recovery by the said estate and by Janice C. Campbell under Sections 484.130 of the Revised Statutes of Missouri, which lien is not affected by any settlement among the parties. Payment or transfer after

notice renders any paying party liable to the undersigned attorney for said lien and said lien follows the payment or transfer into the hands of the recipient thereof. This notice is without prejudice to Janice C. Campbell's objection to the settlement proposed by the Administrator ad Litem in the above-entitled adversary action; it is without prejudice to Janice C. Campbell's right to jury trial, which she continues to demand as her constitutional right, and it is without prejudice to her rights generally except as they may be specifically affected by the operation of said lien.

s/_____
Albert W.L. Moore, Jr. #18921
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of attorney's lien was mailed on this 21st day of February 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem, and to Janice C. Campbell, 7065 East Calle Betelgeux, Tucson, Arizona 85710, Petitioner.

s/_____
Albert W.L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

IN THE ESTATE OF	)	
	)	
JOSEPH F. CAMPBELL	)	Estate No. 30836
	)	
Deceased	)	

CLAIM AGAINST ESTATE

COMES NOW Janice C. Campbell ("Claimant") and for her claim against the above-entitled estate ("the estate") for legal expenses incurred on behalf of the estate states and shows the Court as follows:

1. Claimant filed the above-entitled discovery of assets action on behalf of the estate on the ninth day of May 1989. On the ninth day of October 1992, Albert W. L. Moore, Jr., ("Claimant's Counsel") entered his appearance after being retained by Claimant. Working against groundless ploys by Respondents and a hostile Court and Administrator ad Litem, Claimant's Counsel brought the said action to the point where even the Court and the Administrator ad Litem had to concede that a jury question existed on the issue of decedent's incompetence. (This admission is reflected in the second finding of the judgment entered by the Court on the second day of March 1994.) Claimant's Counsel has also submitted on behalf of Claimant and the estate massive evidence that the estate should be receiving some $400,000.00 more from Respondents than proposed by the Administrator ad Litem (objections to proposed settlement, filed the eighth day of February 1994).

2. This claim is without prejudice to any other right of Claimant whatsoever. The Court peremptorily and unlawfully discharged the jury in the middle of Claimant's presentation of her case and denied Claimant her constitutional right to a jury trial, which Claimant continues to assert and demand. Claimant was unlawfully and unconstitutionally denied the right to submit to a jury the evidence of transfers set out as part of her objections to the proposed settlement, and both the Court and the Administrator ad Litem have ignored that evidence.

3. In the course of nearly eighteen months of representation, Claimant's Counsel has received from Claimant or on Claimant's behalf $14,193.18 for fees and disbursements. The balance currently due to Claimant's Counsel for fees and disbursements amounts to an additional $61,830.28 through the twenty-eighth day of February 1994. Fees and disbursements continue to accrue. The total claim through the twenty-eighth of February 1994 comes to $76,023.46:

$14,193.18 paid
$61,830.28 balance due, 28 February 1994
$76,023.46

As this expense was incurred for the estate's benefit and the estate has benefitted, it should be allowed as a cost of administration under Section 473.403.3 of the Revised Statutes of Missouri and paid from estate assets. Photocopies of statements from Claimant's Counsel are attached to this claim and by this reference incorporated herein and made part hereof. Claimant claims $76,023.46 from the estate to pay this obligation.

4. A photocopy of this claim was mailed on this tenth day of March 1994 to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem, to Joseph E. Campbell, 1509 50th Street North, Blue Springs, Missouri 64015, Co-personal Representative, and to Richard F. Campbell, 18819 East 5th Street North, Independence, Missouri 64056, Co-personal Representative, and to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell.

Affiant states affiant is Claimant and that Claimant has given credit to said estate for payments and offsets to which it is entitled and that the balance claimed as above stated is justly due.

The undersigned swears that the matters set forth in the foregoing pleading are true and correct according to the undersigned's best knowledge and belief and subject to penalty for making a false affidavit or declaration.

Dated: March 10, 1994

Affiant: s/_____
Janice C. Campbell

Address: Post Office Box 13531
Tucson, Arizona 85732

* Service of all notice is waived:____

---

* Consent for immediate hearing is given:___

---

* Consent is given to judgment allowing claim for $_____ (If signed, strike any part not agreed to.)

* Strike words not applicable

_____
Personal Representative

Claim allowed on the _____ day of _____ 1994 in the amount of $_____-_____ and placed in Class _____.

_____
Judge Commissioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
	)	
Deceased	)	

MOTION FOR NEW TRIAL

COMES NOW Petitioner Janice C. Campbell and moves for a new trial and an order of the Court that the above-captioned cause be tried before a jury, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

s/

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for a new trial was mailed on this 23rd day of March 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____
Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR89-030836-01
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
Deceased	)	

SUGGESTIONS IN SUPPORT OF NEW TRIAL

COMES NOW Petitioner Janice C. Campbell and for her suggestions in support of her motion for a new trial states and shows the Court as follows:

1. The Court erred in peremptorily discharging the jury in the midst of Petitioner's presentation of her case. Denying a jury trial of this cause without Petitioner's express consent violates Article 1, Section 22(a) of the Constitution of the State of Missouri, which guarantees trial by jury. Section 473.340.2 of the Revised Statutes of Missouri allows any party to demand a jury trial in an action to discover assets. Petitioner duly demanded a jury trial on the thirteenth of September 1993. Petitioner was denied a decision by a jury; instead, decision was relegated to a claque of lawyers working for Respondents. It is reversible error for a trial court to deny a jury trial demanded in a discovery of assets action (In re Estate of Fugett, 564 S.W.2d 628 (Mo.App., Kansas City District, 1978).

2. The Court erred in stopping the trial. This action denied Petitioner her right to a full hearing, to subpoena witnesses, and to present evidence, all rights fundamental to the concept of ordered liberty comprehended by the due process of law and open courts guaranteed by Article 1, Sections 10 and 14 of the Missouri Constitution and the due process of law guaranteed by the fifth and fourteenth amendments to the Constitution of the United States of America. See New York v. O'Neill, 359 U.S. 1, 3 L.Ed.2d 585, 79 Sup.Ct. 564; State ex rel. Williams v. Marsh, 626 S.W.2d 223 (Mo.banc 1982) at page 230; 16A Am.Jur.2d Constitutional Law Sections 839 and 848. While the outcome of a jury trial may be uncertain, Petitioner has a right to opt for that uncertainty as opposed to the certainty of an unfair decision by a claque of lawyers working for Respondents.

3. The Court erred in adopting a purported compromise settlement, which was defective in that it was neither reduced to writing nor executed by the parties as required by law. Section 473.085 of the Revised Statutes of Missouri makes court approval of a compromise settlement contingent upon "an agreement in writing ... executed by all competent persons ... having beneficial interests ....". As the Court expressly found in its purported judgment entered in [sic] the second of March 1994, only the Respondents ("Defendants" in the judgment) have consented to the settlement offered by the administrator ad litem; there is no finding that anybody has executed a written agreement of compromise as required by statute. The Court's act of entering a judgment over Petitioner's objections (filed on the eighth of February 1994) when by statute her written agreement was a prerequisite to judicial approval, is an action committed under color of law in breach of Petitioner's fundamental civil liberties protected by federal law and Guaranteed by Article 1, Section 10 of the Missouri Constitution and the fifth and fourteenth amendments to the Constitution of the United States of America.

4. Rule 78.04 of the Rules of Civil Procedure, effective on the first of January 1994, allows a motion for new trial to be filed within thirty days after the entry of judgment. Judgment in this case was entered on the second day of March 1994.

s/_____

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for a new trial was mailed on this twenty-third day of March 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

IN THE ESTATE OF	)	
	)	
JOSEPH F. CAMPBELL	)	Estate No. 30836
	)	
Deceased	)	

NOTICE OF LIS PENDENS AND MOTION FOR STAY

COMES NOW Movant Janice J. Campbell and hereby notifies the Court that an action has been filed against her and the personal representatives and administrator ad litem claiming an interest in the above-named decedent's estate (the "estate") and that, pursuant to Section 472.160 et seq. of the Revised Statutes of Missouri, she has appealed the Court's judgment entered the second day of March 1994 in PR89-030836-01 and will appeal the Court's order entered the seventeenth day of March 1994 in PR94-030836-05. Further, Petitioner moves this Court stay all sales of estate assets and expenditures from estate funds until a final settlement is approved in the estate, and then only in accordance with such settlement, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

Exhibit 9

s/_____
Albert W.L. Moore, Jr. #18921
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR MOVANT
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of lis pendens and motion for stay was mailed on this 5th day of April 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____
Albert W.L. Moore, Jr.
Attorney for Movant

IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSOURI
PROBATE DIVISION
AT INDEPENDENCE

In the Estate of	)	
Joseph F. Campbell	)	
	)	Estate No. 30836
Deceased	)	

SUGGESTIONS IN SUPPORT OF STAY

COMES NOW Movant Janice J. Campbell and for her suggestions in support of her motion for stay states and shows the Court as follows:

1. The administrator ad litem in her testimony on the seventeenth of March 1994 on her petition for sale of personalty, PR94-030836-05, indicated that she had done nothing on the Court's judgment of the second of March 1994 because the judgment was not yet final. Appealable probate orders are tantamount to judgments in determining when they become final (Sections 472.160 and 472.180 of the Revised Statutes of Missouri; Rules 75.01 and 81.05 of the Rules of Civil Procedure). Consistency and prudence would therefore require that the administrator ad litem not sell the personal property specified in the order of the seventeenth of March 1994 until the order becomes final. In this litigation, however, nothing can be taken for granted. Hence an express order enjoining precipitate sale under the order seems appropriate.

2. Preliminary to her appeal in PR94-030836-05, Petitioner will file a motion to vacate the order of 17 March 1994. Preparation of the motion will take additional time, given the need to transcribe the record and the plethora of errors therein. An immediate stay is needed to prevent a premature sale and dissipation of estate assets currently in custodia legis. It is plain that Respondents in PR89-030836-01, having taken more than their share of the estate, now wish to deprive Movant, Petitioner therein, of security for her expenses and a portion of her legacy by paying claims and expenses from assets now in the Court's control. They have continued to divert liquid assets from the estate. The Court will recall that, since the administrator ad litem was appointed on the seventh of July 1993, $1,176.00 in Ford dividends have been paid and that the administrator ad litem testified on the seventeenth of March 1994 that no deposits were made into the estate account since she was appointed - the balance was $.67 then; it is $.67 now. The Court will also recall that the Respondents have never accounted for the other $15,027.17 in cash dividends paid on the Ford stock remaining after the 654 shares were sold (Petitioner's response to petition to sell filed the twenty-second of February 1994). Now Respondents and the administrator ad litem use the lack of liquid funds as a specious pretext for selling the most productive assets to pay the waste on realty, which after the expenditure of many thousands of estate dollars is, according to the administrator ad litem's own testimony, so decrepit as to be unmarketable.

3. In view of the estate's mounting claims and expenses, its wasting assets on Ash Street, three pending matters filed by the Movant pro se and never ruled on by the Court, the pending legal action and the pending appeal in PR 89-030836-01, and the imminent appeal in PR94-030836-05, it would seem appropriate to stay all sales and expenditures

until the Court approves a final settlement (with a full accounting by the personal representatives) and assures that all disbursements are made according to such settlement, or at least until Movant can move to vacate and take her appeal in PR94-030836-05.

WHEREFORE, Petitioner prays this Court stay all sales of estate assets and expenditures of estate funds pending final approval of a final settlement of the estate.

s/_____
Albert W.L. Moore, Jr. #18921
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR MOVANT
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for stay was mailed on this 5th day of April 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____
Albert W.L. Moore, Jr.
Attorney for Movant

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR94-030836-05
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
Deceased	)	

MOTION FOR NEW TRIAL
OR IN THE ALTERNATIVE TO SET ASIDE

COMES NOW Janice C. Campbell and moves for a new trial or in the alternative to set aside the order rendered therein, for the reasons more fully stated in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein.

s/_____

Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070
ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion for a new trial or to set aside was mailed on this 23rd day of March 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____

Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
PROBATE DIVISION AT INDEPENDENCE

JANICE C. CAMPBELL	)	
	)	
Petitioner	)	
	)	
vs.	)	Case No. PR94-030836-05
	)	Estate No. 30836
JOSEPH E. CAMPBELL, et al.	)	
	)	
Respondents	)	
	)	
In the Estate of Joseph F. Campbell	)	
	)	
Deceased	)	

SUGGESTIONS IN SUPPORT OF
NEW TRIAL OR TO SET ASIDE

COMES NOW Janice C. Campbell and for her suggestions in support of her motion for new trial or to set aside the order states and shows the Court as follows:

1. The Court erred in issuing its order of the seventeenth of March 1994 in that the administrator ad litem failed to make a prima facie case for the sale of the Ford stock. In her petition, the administrator ad litem cited a lack of liquidity in the estate to pay expenses, costs and claims, but in her testimony she could not cite any expenses, costs or claims that could not be deferred. Moreover, the administrator ad litem could not account for any cash income

that had been received by the co-personal representatives, as they had never accounted to her for such income. A proper accounting is necessary to any determination that the estate lacks liquidity. Among the liquid assets never accounted for are more than $13,000.00 in cash dividends paid on Ford stock (paragraph two, response to petition for order to sell, filed by Janice C. Campbell on the twenty-second of February 1994).

2. The Court erred in refusing to allow the introduction of evidence that sale of the Ford stock was imprudent and not in the best interests of the estate. The administrator ad litem, in testimony that was vague, evasive, non-responsive disingenuous and insolent, could not or would not say why a productive asset should be sold to pay for realty that was wasting.

3. The Court erred in refusing to accept evidence that the proposed sale under the circumstances violated the equitable principle of marshaling assets. In order to distribute net shares to the three beneficiaries, the estate will have to collect some of the judgment rendered in its favor on the second of March 1994 in PR89-030836-01. Janice C. Campbell as a beneficiary of the estate has no direct legal right to collect that judgment; it was rendered in favor of the administrator ad litem. Hence the administrator ad litem has a legal right to two funds, the judgment and the assets in hand, while Janice C. Campbell has an interest in only one. Hence the judgment, the fund as to which Janice C. Campbell is the junior creditor, should be marshaled to pay the costs, expenses and claims of the estate. Otherwise, Janice C. Campbell's distributive net share will consist of an interest in a possibly unenforceable judgment. When the administrator ad litem was asked whether she had the right

to enforce the judgment, she launched into a non-responsive vituperative jeremiad laced with infantile efforts to insult the questioner. This question, of course, bore directly on the issue of marshaling assets. The administrator ad litem never answered the question and the Court abruptly stopped the line of questioning and brushed off the issue.

4. The Court not only indulged the antics of the administrator ad litem; it encouraged and supported them. The Court made objection on behalf of the administrator ad litem. The Court invented arguments on her behalf. The hearing was wholly undignified and disorderly, and the Court's loud, belligerent, bellicose, boorish and utterly unjudicial conduct flew in the face of Canon 3 of Missouri's Code of Judicial Conduct:

> The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:
>
> A. Adjudicative Responsibilities.
>
> (1) A judge should be faithful to the law and maintain professional competence in it. The judge should be unswayed by partisan interests, public clamor, or fear of criticism.

> (2) A judge should maintain order and decorum in proceedings before the judge.
>
> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity and should require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control.

The Court's hostility toward the interests of Janice C. Campbell was blatant. The Court laid a spurious ground for its order in arguing sua sponte that Janice C. Campbell had no right to any specific assets of the estate, such as the Ford stock. Janice C. Campbell, however, has never claimed that she did. But she is a beneficiary of the estate and those who administer it have a duty to act prudently and be fair and impartial to all beneficiaries, obligations chronically honored in the breach in the administration of this estate. As an interested person, Janice C. Campbell has standing to object to an imprudent sale of assets and to appeal the Court's order to sell an asset (Sections 472.010(15) and 472.160.1(6) of the Revised Statutes of Missouri). On the seventeenth day of March 1994, the Court took pains to hear all other matters on its docker first, thereby removing from the Court room all outside parties (except, as it turned our, Janice C. Campbell's expert witness). In light of the Court's conduct of the hearing in this matter, its prior action takes on new significance.

5. Rule 78.04 of the Rules of Civil Procedure, effective on the first of January 1994, allows a motion for new trial to be filed within thirty days after the entry of judgment. The order in this case was entered on the seventeenth day of March 1994.

WHEREFORE, Petitioner prays this Court vacate its order of the seventeenth of March 1994 or in the alternative order a new trial of this cause and refer the cause to another judge for hearing.

s/_____
Albert W. L. Moore, Jr.
554 South Ash
Post Office Box 7800
Independence, Missouri 64053
(816) 254-6070

ATTORNEY FOR PETITIONER
JANICE C. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing suggestions in support of motion for a new trial or to set aside was mailed on this fifteenth day of April 1994 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Respondents, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____
Albert W. L. Moore, Jr.
Attorney for Petitioner

IN THE CIRCUIT COURT OF JACKSON COUNTY,
MISSOURI
AT INDEPENDENCE

ALBERT W.L. MOORE, JR.,

Plaintiff, CV94-5667
Division Two
vs. Docket O

JANICE C. CAMPBELL, et al.,

Defendant.

TRANSFER ORDER

IT IS HEREBY ORDERED that the above captioned cause be transferred to Probate Division 19. Plaintiff has a pending probate matter in Division 19.

s/_____
WILLIAM W. ELY, JUDGE, DIVISION TWO

Dated: June 9, 1994

Copies to:
Civil Data 1
Civil Data 2
Civil Filing
Albert W.L. Moore
Les D. Wight
Rebbecca Lake Overman
Janice C. Campbell

COURT NEWS

16th Judicial Circuit Assignments

CIRCUIT JUDGE ASSIGNMENTS
(March 7, 1994 through September 5, 1994)

******

DIV. 2-Hon. William W. Ely Civil "O"

******

DIV. 19-Hon. John A. Borron Probate

******

Exhibit 12

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

In the Estate of:	)	
	)	
JOSEPH F. CAMPBELL,	)	W.D. No. 51363
	)	
Deceased.	)	

IN THE JACKSON COUNTY CIRCUIT COURT
[SIXTEENTH] JUDICIAL CIRCUIT, DIVISION 19
Honorable John A. Borron, Jr., Judge

In the Estate of:	)	
	)	
JOSEPH F. CAMPBELL	)	Cause No. PR94-30836-06
	)	
Deceased.	)	

TRANSCRIPT ON APPEAL

APPEARANCES:

Mr. Kevin R. Thomas
Attorney at Law
221 W. Lexington Ave., Suite 250
Independence, Missouri 64051
For: Petitioner

Mr. Albert W. L. Moore, Jr.
Attorney at Law
554 S. Ash
Independence, Missouri 64053
For: Respondent

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THURSDAY, DECEMBER 15, 1994

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(December 15, 1994)

THE CLERK: On the record.

THE COURT: These are proceedings before the Probate Division of the Circuit Court of Jackson County, Missouri, at Kansas City on December '15, 1994, presided over by John A. Borron, Jr,. The first matter to be taken up this morning involves the application of the administrator ad litem for allowance of attorney's fees. And actually, it should be Overman versus the Campbell brothers as administrators--or personal representatives. The docket number is PR94-30846-06 (sic).

Will counsel for the Petitioner please enter his appearance?

MR. THOMAS: Judge, my name is Kevin Thomas. And I'm here representing Rebecca [sic] Overman, the administrator ad litem today.

THE COURT: And the party opposing the application is actually a distributee of the estate, Janice C. Campbell. And will counsel for Janice Campbell please enter his appearance?

MR. MOORE: Albert Moore, entering appearance strictly to place on the record objection to jurisdiction and the constitutionality of continuing with this proceeding.

THE COURT: Well, those comments are not appropriate at this point. We have before the Court this morning a motion to reconsider denial of an application for change of judge, or in the alternative to disqualify judge. Mr. Moore filed on behalf of Ms. Campbell, on--

MS. OVERMAN: Your Honor, for the record, we've not been served with that action.

MR.MOORE: They've been served by mail.

THE COURT: Well, you had better serve them right now, Mr. Moore.

MR. MOORE: I have a copy of this with which to serve them.

THE COURT: On December the 2nd, 1994, Mr. Moore filed on behalf of Ms. Campbell an application for change of judge pursuant to Civil Rule 51.05. That application was overruled because Rule--Civil Rule 51.05 was not invoked by the order that the Court entered-- the adversary probate order that the Court entered.

It appears from the present motion that Mr. Moore has finally figured out that he should have proceeded under Section 472.060. And there is facial compliance, although not technical compliance. But there is facial compliance with Section 472.060. So the Court will assign--or transfer this file to the presiding judge for assignment to another judge.

So this concludes the proceedings today in the matter of Campbell.

MR. THOMAS: Thank you, Your Honor.

MR. MOORE: Thank you, Your Honor.

Missouri Court of Appeals,
Western District

Albert W.L. MOORE, Jr., Appellant,

v.

Janice C. CAMPBELL, et al., and
Rebbecca Lake Overman,
Respondents.

No. WD 49694.

June 20, 1995.

Motion for Rehearing and/or Transfer to
Supreme Court Denied Aug. 1, 1995.

Application to Transfer Denied
September 19, 1995

Albert W.L. Moore, Jr., pro se.

Kevin R. Thomas and Rebbecca Lake Overman, Independence, for Administrator Ad Litem, Rebbecca Lake Overman.

Before BRECKENRIDGE, P.J., and ELLIS and LAURA DENVIR STITH, JJ.

ELLIS, Judge.

Albert W.L. Moore, Jr. (Moore), an attorney, appeals from an Order of the Jackson County Circuit Court, Probate Division dismissing defendant, Rebbecca L. Overman (Overman), administrator ad litem of the estate of joseph f. campbell, deceased, from his suit to recover attorney's fees. Moore's action was based on his representation of Janice C. Campbell (Campbell) in a discovery of assets action on behalf of the Joseph F. Campbell estate. As a result of the discovery of assets proceeding, a judgment of over two hundred thousand dollars ($200,000.00) was entered in favor of Overman as administrator ad litem of the estate.

Janice C. Campbell and her brothers, Joseph E. Campbell and Richard F. Campbell are equal beneficiaries in the estate of their father, Joseph F. Campbell. The two brothers are also co-personal representatives of the estate. Moore demanded payment of his attorney's fees from Janice C. Campbell, Joseph E. Campbell and Richard F. Campbell, as well as from Overman as administrator ad litem. His demands went unheeded.

On March 15, 1994, Janice C. Campbell filed a claim in the probate division against the Joseph F. Campbell estate for legal expenses incurred on behalf of the estate, namely the services of Mr. Moore in the discovery of assets action. On March 17, 1994, Moore filed a petition in Division 2 of the circuit court to recover attorney's fees against defendants Janice C. Campbell, Joseph E. Campbell, individually and as co-personal representative, Richard F. Campbell, individually and as co-personal representative, and Rebbecca Lake Overman, administrator ad litem.

Both Campbell's claim, seeking payment of seventy-six thousand twenty-three dollars and forty-six cents ($76,023.46), and Moore's petition, asking for sixty-one thousand eight hundred thirty dollars and twenty-eight cents ($61,830.28), were for his legal services during the period from September 3, 1992 until February 28, 1994. Campbell's claim included fourteen thousand one hundred ninety-three dollars and eighteen cents ($14,193.18) that she had already paid to Moore. These payments were deducted from the total in Moore's petition and explain the difference in amounts sought.

Overman filed a Motion to Dismiss Moore's petition on May 2, 1994. In her motion Overman stated that there was a duplicity of actions in that Moore had filed in action in the circuit court and Campbell had filed a claim in the probate division for the same attorney's fees. Therefore, she argued, Moore's petition should be dismissed since he had a probate claim on file with the probate division which sought the same relief. On June 9, 1994, Moore's action was transferred from Division 2 to Division 19, the probate division. The reason stated in the transfer order was that "plaintiff [Moore] has a pending probate matter in Division 19." Moore states that he did not receive notice of this transfer.

The probate division issued an order dismissing Defendant Overman as administrator ad litem from Moore's action for attorney's fees. The order did not dismiss the other defendants from the action because they did not join Overman in the motion to dismiss. However, on January 25, 1995, Moore dismissed the remaining defendants without prejudice, thereby making the probate court's order a final judgment from which he brought this appeal.

In reviewing the dismissal of a petition, we sustain same if any ground supports the motion, regardless of whether the trial court relied on that ground. Delmain v. Meramec Valley R-III School Dist., 671 S.W.2d 415, 416 (Mo.App.1984). We accord the allegations in the petition every fair and reasonable intendment and, if the averments state a claim calling for invocation of substantive law principles which entitle plaintiff to relief, we will reverse the dismissal of the petition. Id.

Moore raises four points on appeal all of which claim error by the probate division in dismissing Overman from the cause below. In his first point, Moore claims that the probate division of the circuit court did not have jurisdiction to dismiss Overman because the cause below was not a probate matter or probate business. He argues that the probate division's jurisdiction is limited to "probate business" or "probate matters" and that his petition involved neither.

The Constitution of the State of Missouri provides that probate judges of first class counties shall, as of January 2, 1979, "become circuit judges of their respective circuits ... and shall have the same powers and jurisdiction as judges of the circuit court." **Mo. Const. art. V, § 27.4(a).** The elimination of restrictions on the legislature under the former Section 16 or Article V of the Missouri Constitution, "has given the legislature unlimited authority in determining the nature and extent of probate division jurisdiction." 5 J. Borron and F. Hanna, Missouri Practice: Probate Law and Practice 534 (1988).

The legislature's determination of the jurisdiction of the probate division is found in § 472.020[1] which states that "[t]he probate division of the circuit court may hear and determine all matters pertaining to probate business...." Section 472.030 provides that the probate division has "the same legal and equitable powers to effectuate and to enforce its orders, judgments and decrees in probate matters as circuit judges have in other matters...." In considering these statutory provisions, the court, in Webb v. First Nat'l Bank & Trust Co., 602 S.W.2d 780 (Mo.App. 1980), found that "the phrase 'probate matters' is not susceptible of concise definition." Id. at 782. It went on to opine that §§ 472.020 and 472,030 were not meant to convert the probate court into a court of general jurisdiction. Id. And, in In re Estate of Woodrum, 859 S.W.2d 259 (Mo.App. 1993), the court held that the probate court did not have jurisdiction to decide an action to recover on a surety bond covering a conservator because it was a contract action. In the case at bar, Moore argues that since the underlying matter was an action to enforce equitable and statutory liens for professional services, it should be considered to be more like an action on a conservator's bond than like a probate matter. We disagree.

In In re Estate of Myers, 376 S.W.2d 219, 224 (Mo. banc 1964), our Supreme Court stated:

> We therefore must conclude that it was intended that this section [§ 472,030] would give probate courts complete and unrestricted equitable powers "in probate matters." The difficulty in construction may likely arise in

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[1] Unless otherwise indicated, all statutory references ar RSMo 1994.

> determining the proceedings coming within the classification of "probate matters." It is suggested by Judge Welch that "a controversy which necessarily is involved in the winding up of the affairs of a decedent, is a matter pertaining to probate business***." 1963 Wash.U.L.Qr. 346. This court has heretofore stated the general rule that "[m]atters of probate business, as commonly understood and under all the authorities, pertain to the proving of wills, the appointment of guardians and curators, and the administration and settlement of estates of decedents, incompetents and the like." Douney v. Schrader, 353 Mo. 40, 182 S.W.2d 320, 323 [(Mo. banc 1944)]. It is our view that the scope of matters which may be included in the phrase, "probate matters," will not be fully and completely determined until various questions in that regard are, from time to time, presented to the appellate courts for judicial decision. In the case at bar, it may confidently be said that the simple matter of tracing the collections made by Mr. Myers into his bank account, which shortly thereafter came into the possession of his executrix, is a proper exercise of equitable powers by the probate court in a "probate matter."

Likewise, we can say with confidence that the award of attorney's fees for professional services rendered in a discovery of assets proceeding on behalf of a decedent's estate during the course of administration is a "probate matter." Thus, Moore's contention that the probate division

had no jurisdiction to dismiss Overman because the underlying cause be not a probate matter is without merit. Point denied.

In his second point on appeal, Moore argues that the probate division's order was founded on the idea that his petition was based exclusively on a statutory attorney's lien when, in fact, it was not. His third point claims that the order was based on a false legal proposition that an administrator ad litem of a decedent's estate cannot as a matter of law be subject to an attorney's lien on a recovery for the estate. The two points are related and will be addressed together.

Moore's petition in circuit court was in three counts. Count I alleged that he was retained by Janice C. Campbell to pursue a discovery of assets proceeding on behalf of the Joseph F. Campbell Estate; that he provided valuable legal services resulting in a judgment in favor of the estate in excess of $200,000; that his fees were reasonable; that demand for payment had been made but payment had not been forthcoming; and praying for a judgment for the value of his services. In Count II, Moore claimed an attorney's lien for the value of his services pursuant to § 484.130 and sought foreclosure thereof against "the proceeds of judgment and the current assets of the estate." And, in Count III, Moore alleged that the judgment in the discovery of assets proceeding was void because of failure to comply with § 473.085; that Overman proposed to eviscerate the fund "now in custodia legis;" that her actions would preclude collection of the judgment proceeds; and as a result, would preclude payment of his fees. In his prayer, he asked that Overman be enjoined from selling any assets or paying any claims

until final settlement of the estate; that Overman be directed to pay his fees as part of the final settlement; that a receiver be appointed; and for other relief, description of which is unnecessary to disposition of this appeal.

Overman's motion to dismiss the petition alleged that Janice C. Campbell, "by and through her attorney, Albert W.L. Moore's attorney's fees on or about March 10, 1994; that Moore's petition was filed on March 21, 1994; that the claim and the petition were for the same relief; and that under the doctrine of abatement, Moore's petition should be dismissed.

In its order dismissing the petition, the probate division concluded that all three counts of Moore's petition were predicated on an alleged attorney's lien pursuant to § 484.130. It then ruled, relying on Carter v. Stendeback, 482 S.W.2d 534 (Mo.App. 1972), as authority, that an attorney's lien cannot be imposed on the undistributed assets of the estate, and therefore, that the motion to dismiss must be sustained. Thus Moore's arguments in his points II and III are to the effect that the court's dismissal of his petition was erroneous because all three counts were not based on an alleged attorney's lien, and secondly that even if they were, the court erred in finding that the judgment could not be subjected to an attorney's lien.

We first address the probate division's stated reasons for dismissing the petition. As noted, the court relied on Carter, 482 S.W.2d 534, in reaching its decision. In that case, John R. Hardcastle died, survived by his second wife, Nellie, and Martha Stendeback, his stepdaughter. Hardcastle had drawn a will in 1954 leaving his entire estate to his first

wife, Virginia, Martha's mother. It further provided that if Virginia predeceased him (which in fact occurred), the estate was left to Martha. When Hardcastle died, the will could not be located, and an intestate estate was opened with Nellie's son, John D. Powell, acting as administrator.

At that point, Martha retained the services of plaintiff Carter, an attorney, and entered into a contract providing for a contingent fee of one-third of any sum received by or on behalf of Martha from the Hardcastle estate "by way of suit or compromise, inheritance or devise, or in any other form." Id. at 535. As a result of Carter's efforts, Hardcastle's 1954 will was ultimately located and admitted to probate. Nellie elected to take against the will, thereby becoming entitled to one-half of the estate, and Martha became entitled to the other half. Some time thereafter, Martha terminated Carter's services and, although his fee was discussed, they could not reach an agreement and he filed an action against Martha and the administrator of Hardcastle's estate. The case was tried to the court and Carter was awarded judgment against Martha and the estate, and the judgment was declared to be a lien on Martha's distributive share of the estate.

On appeal, the parties agreed that the trial court erred in awarding a money judgment to against the administrator of the estate. The Eastern District went on to hold that "an attorney's lien does not properly lie against the undistributed assets of an estate, based on a judgment rendered against a beneficiary." Id. at 537. In doing so, the court observed that Carter's claim was not a debt owed by the estate, but rather by a beneficiary of the estate. Id.

In the case at bar, the probate division construed Carter as standing "for the proposition that [Moore] cannot assert an attorney's lien against the undistributed assets of the

Campbell estate...." And, having previously determined that all three counts of Moore's petition were "predicated upon an alleged attorney's lien," the court dismissed all counts.

The probate division erred as a matter of law in finding that all three counts of Moore's petition involved imposition of an attorney's lien pursuant to § 484.130. "[T]he clear, unambiguous language of the statue provides that '[f]rom the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a *lien upon his client's cause of action or counterclaim.*' § 484.130 (emphasis added)." Kansas City Area Transp. Auth. v. 4550 Main Assocs., 893 S.W.2d 861, 868-69 (Mo.App.1995). The probate division treated the attorney's lien as being one and the same as a cause of action for attorney's fees. Such is not the case. Section 484.130 merely "affords an attorney protection for services rendered by creating a lien in his favor...." Id. at 867 (quoting Satterfield v. Southern Ry., 287 S.W.2d 395, 397 (Mo.App.1956)). The fact that an attorney has a lien against his client's cause of action does not preclude the attorney from collecting his fees by other means, such as an action in quantum meruit, without attempting to foreclose his lien. Indeed, "[i]t is only if the client recovers on his cause of action that there will be a tangible asset ... from which the attorney fee can be collected by foreclosing the lien." Id. at 869. Thus, Count I of Moore's petition, which sought judgment for his attorney fees, did not implicate any alleged attorney's lien. It merely prayed for judgment in the amount of the fees, plus interest and court costs.

Missouri courts generally hold that expenses and fees "incurred by a beneficiary of an estate, rather than the personal representative, must be shown to be beneficial to the estate as a whole rather than to just individuals interested

therein." In re Estate of Murray, 682 S.W.2d 857, 858 (Mo.App.1984) In Murray, a beneficiary of the estate retained counsel and brought a successful action to remove the personal representative and compel an accounting. The beneficiary then sought reimbursement of her attorney's fees and expenses from the estate. In affirming the trial court's award of fees and expenses, this court stated:

> As a general principle, the allowances of attorney fees under the criteria of "equitable balancing of benefits" is governed by the rule ... that "very unusual circumstances" must be shown.... As to this specific situation, where a beneficiary of an estate is seeking an allowance for attorney fees from the estate upon an action for an accounting from and removal of a personal representative, there should exist the requirement that not only must the action have been successful, but that the result is beneficial to the estate.

Id. at 858-59. The foregoing language was quoted with approval by the Eastern District of this court, in a case involving similar facts in In re Estate of Chrisman, 723 S.W.2d 484, 487 (Mo.App.1986).

In the instant appeal, Janice C. Campbell's action for discovery of assets was extremely beneficial to the estate as a whole, recovering in excess of $200,000 for the estate. The attorney's fees incurred in that action, therefore, meet the Murray test for allowance of such fees.

We then turn to Count I of Moore's petition to determine if it stated a cause of action for recovery of his fees.

> To recover on [the] theory [of quantum meruit], plaintiff must plead and prove that it provided to defendant materials or services at the request or with the acquiescence of defendant, that those materials or services had a certain reasonable value, and that defendant despite demands of plaintiff, has failed and refused to pay the reasonable value of those materials and labor.

First Place, Inc. v. Douglas Toyota III, Inc., 801 S.W.2d 721, 723 (Mo.App.1990) (quoting Berra v. Papin Builders, Inc., 706 S.W.2d 70, 73 (Mo.App.1986)). Giving the allegations of Count I their fair and reasonable intendment, Moore stated a cause of action in quantum meruit. The probate division therefore erred in dismissing it as seeking to impose an attorney's lien on the undistributed assets of the Campbell estate.

Count II of the petition, on the other hand, alleges an attorney's lien and, although unartfully drawn, the gist of the prayer is to impose the lien on the proceeds of the discovery of assets judgment. As to this Count, the court below correctly found that "an attorney's lien does not properly lie against the undistributed assets of an estate." Carter v. Stendeback, 482 S.W.2d at 537. While Carter dealt with an alleged attorney's lien based on a judgment rendered against a beneficiary, the same rationale applies to a case such as this where the attorney's fees were incurred prosecuting an action that ultimately resulted in a favorable judgment for the estate. This is so because the probate code establishes the priorities in which estate claimants are paid.

Section 473.397 classifies claims and statutory allowances, and § 473.430 provides that claims and statutory allowances shall be paid in the order specified in § 473.397. The code provides, in effect, for a marshaling of assets, and then directs the use of those assets for payment of claimants in the order of priority. Thus, it would be inconsistent with the scheme of the probate code to permit imposition of an attorney's lien on estate assets. Moreover, attorneys performing services for a probate estate are afforded protection because such fees are an expense of administration. In re Sternberg's Estate, 204 S.W.2d 761, 764 (Mo.1947). Expenses of administration are class 2 claims, second only in order of payment to court costs, which are class 1. § 473.397.

As noted previously, the attorney lien statute is designed to afford the attorney protection for services rendered by creating a lien in his favor. In the context of probate administration, however, the attorney is already granted protection for fees incurred on behalf of the estate. Therefore, since as matter of law, an attorney's lien cannot be imposed on the assets of the estate, the probate division did not err in dismissing Count II of his petition.

As to Count III of Moore's petition, he designates it a "creditor's bill." While, as noted, the pleading is rather unartfully drawn, it appears he is alleging that Overman proposes inequitable offsets for distributive shares of the estate which would largely preclude actual collection of the discovery of assets judgment and that by virtue thereof, there may be insufficient assets in the estate to pay his fees; that the estate assets are not subject to levy; and that he has no adequate remedy at law.

> Missouri recognizes the creditor's bill as a viable remedy. It is an equitable remedy available to a creditor who seeks to enforce the payment of debts out of assets that cannot be reached by traditional means of execution on a judgment established in a suit at law. The creditor's bill may be brought by an unsecured creditor to set aside a transfer by the debtor's hidden assets, subjecting that property to the payment of the debt.

Shockley v. Harry Sander Realty Co., 771 S.W.2d 922, 924 (Mo.App.1989) (citations omitted).

Applying the foregoing to Count III of Moore's petition, and giving his allegations their fair and reasonable intendment, we cannot say that Count III states a claim upon which relief in the nature of a creditor's bill can be granted. Count III alleges that Overman is seeking permission from the probate division of the circuit court for her actions. The probate division is certainly aware of its own judgment and Moore's claim to payment of his fees from the estate. The allegations do not cry "out for equitable relief." Id. We therefore conclude that the trial court did not err in dismissing Count III of the petition.

We must briefly address Overman's contention that the dismissal of all three counts of the petition was justified by the doctrine of abatement. This was the ground for dismissal specified in her motion to dismiss, and she argues it in this appeal:

> The principle of abatement bears the enlightening appellation of "pending action doctrine." It comes into being in the situation in which a subsequent suit is instigated by the plaintiff in a previous suit. Treatment of the second action is generally as follows: "[W]here two actions involving the same subject matter between the same parties are brought in courts of concurrent jurisdiction, the court in which service of process is first obtained acquires exclusive jurisdiction and may dispose of the entire controversy without interference from the other." State ex rel. General Dynamics v. Luten, 566 S.W.2d 452, 458 (Mo. banc 1978). Abatement is also properly applied to a later action between the same parties for the same cause of action brought in the same court or a court of another jurisdiction. See State ex rel. Industrial Properties, Inc. v. Weinstein, 306 S.W.2d 634, 637-38 (Mo.App.1957).

Overman contends that Janice C. Campbell's claim for allowance of Moore's attorney fees, filed in the probate division prior to Moore's petition in circuit court, seeks the same relief as the petition, and since the claim was filed first, Overman reasons that the second action must be dismissed.

We disagree. First the parties to the claim, and the parties to the petition are not the same. Janice C. Campbell filed the claim in the probate division seeking allowance of the fees Moore charged in representing her in the discovery of assets proceeding. Moore is not a party to that action. He has no control over how or when the claim will be

prosecuted. On the other hand, in the circuit court action he filed, Moore is the plaintiff. Janice C. Campbell is not a party. Overman is the only mutual party in both the claim and the petition. Thus, the pending action doctrine is inapplicable. However, we would point out that the claim and Moore's action may be consolidated for trial pursuant to Rule 66.01(b), and, of course, a double recovery is prohibited as "a species of unjust enrichment and is governed by the same principles of preventive justice." Kincaid Enters., Inc. v. Porter, 812 S.W.2d 892, 900 (Mo.App.1991).

Because of our disposition of the case, we need not address Moore's other points, alleging violation of his due process rights. The trial court's dismissal of Counts II and III of Moore's petition is affirmed. The trial court's dismissal of Count I of Moore's petition is reversed, and the case is remanded for further proceedings.

All concur.

IN THE CIRCUIT COURT OF APPEALS
WESTERN DISTRICT

ALBERT W.L. MOORE, JR)		
	)	
Plaintiff/Appellant	)	
	)	
vs.	)	WD 49694
	)	CIR.CT.NO. CV94-5667
	)	
JANICE C. CAMPBELL, ET AL.		
	)	
Defendants/Respondants	)	

MOTION FOR REHEARING OR IN THE ALTERNATIVE
FOR TRANSFER TO THE SUPREME COURT

COMES NOW Appellant Albert S. L. Moore, Jr., pro se, and moves pursuant to Rules 83.02 and 84.17 of the Rules of Civil Procedure that this Court grant a rehearing in this cause or in the alternative transfer this cause to the Supreme Court of Missouri and in support thereof states:

1. A rehearing in this case should be granted because:

a. The Court as shown by its opinion overlooks the primacy and effect of the denial of constitutional due process in this case. Failure to comply with due process renders a judgment void, even if it be justifiable on the merits.

b. The controlling Supreme Court of Missouri decision calls for the reversal of the dismissal below, not a mere partial reversal, when any theory supports relief.

c. The Court as shown by its opinion misinterprets the law of probate jurisdiction.

d. The Court as shown by its opinion misinterprets the law of attorneys' liens.

e. The Court as shown by its opinion overlooks and rashly assumes facts crucial to the determination of the adequacy of the legal remedy in respect of Appellant's creditor's bill below.

2. Reasons for the foregoing are more fully set forth in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein and made part hereof.

3. In the event that the foregoing request for rehearing be denied, this cause should be transferred to the Supreme Court because:

a. It is of general interest or importance that constitutional due process be accorded all litigants.

b. It is of general interest or importance that the jurisdiction of probate, which touches and concerns so many citizens, be more precisely defined. The inclusion or exclusion of actions for attorneys' compensation for probate work can provide significant guidance to courts and counsel.

c. It is of general interest or importance whether counsel in adversary probate matters have the full right afforded counsel in other litigation to recover their compensation. This can affect the ability of people who need assistance of counsel in such matters to find capable and diligent lawyers willing to represent them.

d. Similarly, it is of general interest or importance that relegating counsel in such matters to the tender mercies of a probate division that wants to do a quick and dirty settlement, instead of hearing and considering evidence of wrongdoing, will tend to reduce the pool of capable and diligent counsel available to members of the public seeking redress of grievances in the probate division.

WHEREFORE, Appellant Albert W. L. Moore, Jr., respectfully requests that the Court grant a rehearing in this cause or in the alternative transfer the cause to the Supreme Court.

Albert W.L. Moore, Jr. (#18921)
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing was mailed, first-class postage prepaid, this fifth day of July 1995 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

Albert W. L. Moore, Jr.
Pro Se

IN THE CIRCUIT COURT OF APPEALS
WESTERN DISTRICT

ALBERT W.L. MOORE, JR)		
	)	
Plaintiff/Appellant	)	
	)	
vs.	)	WD 49694
	)	CIR.CT.NO. CV94-5667
	)	
JANICE C. CAMPBELL, ET AL.	)	
	)	
Defendants/Respondants	)	

SUGGESTIONS IN SUPPORT OF MOTION FOR REHEARING OR IN THE ALTERNATIVE FOR TRANSFER TO THE SUPREME COURT

COMES NOW Appellant Albert W. L. Moore, Jr., and for his suggestions in support of his motion for rehearing or in the alternative for transfer to the Supreme Court states and shows the Court as follows:

1. While refreshingly lucid and artfully done, most of the Court's opinion is unnecessary. Its opinion overlooks the primacy of the constitutional due process requirement. The Court mistakenly refrains from addressing the due process issue (Opinion, page 13). A judgment arrived at in violation of due process is void, even if it can be justified on the merits (16D C.J.S. Constitutional Law Section 1168, citing Inland Steel Co. v. N.L.R.B., C.C.A. 7, 109 F.2d 9 and Ackermann v. U.S., C.A. Tex., 178 F2d 983, affirmed 71 S.CT. 209, 340 U.S. 193, 95 L. Ed. 207, followed in 179 F.2d 236, affirmed 71 S.CT. 209, 340 U.S. 193, 95 L.

Ed. 207). Hence the due process issue is outcome - determinative and unavoidable, unless the Court disposes of the appeal under Bracey, infra paragraph 2. The Court odes not escape the need to address the due process issue by purporting to find that the probate division had jurisdiction, even if such finding were valid. The Court overlooks the fact that Appellant also cited lack of notice, denial of opportunity to be heard, and denial of the right to an impartial tribunal (Appellant's Brief pages 3, 11-13). Notice, opportunity to be heard and an impartial tribunal are essential to due process (Appellant's Brief pages 11-13). State courts must accord parties due process in determining the adjective and substantive law of the state (Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 50 S.Ct. 451, 281 U.S. 673, 74 L. Ed. 1107, conformed to 42 S.W.2d 23, 328 Mo. 836 (1930)). A party must have the opportunity to contest the propriety of every step of the process (16C C.J.S. Constitutional Law Section 945, citing State v. Broaddus, 289 S.W. 792, 795, 315 Mo. 1279 and City of St. Louis v. Missouri Pac. R. Co., 211 S.W. 671, 278 Mo. 205). A right of action is property entitled to protection against deprivation without due process of law (16D C.J.S. Constitutional Law Section 1139 citing Sliosbert v. New York Life Ins. Co., 216 N.Y.S. 215, 217 App. Div. 67, affirmed 155 N.E. 749, 244 N.Y. 482 and 155 N.E. 913, 244 N.Y. 599). If Appellant is correct on any of these points - jurisdiction, notice and opportunity to be heard, or lack of an impartial tribunal - he is entitled to a reversal of the judgment in its entirety. No further analysis is needed. The Court need not lavish its time and loving (albeit misdirected) craftsmanship on the other issues at this early stage of the litigation.

2. The Court overlooks Bracey v. Monsanto Company, Inc., 823 S.W.2d 946 (Mo.banc 1992), which requires that a dismissal be reversed when the petition sets forth any theory supporting relief. Bracey does not call for a mere partial reversal of the erroneous dismissal below.

3. The Court by its opinion finds an attorney's action to recover fee, foreclosure of lien and creditor's bill to be equivalent to "the simple matter of tracing the collections made by Mr. Myers into his bank account ...." (Opinion pages 4 and 5, quoting the opinion in In re Estate of Myers, 376 S.W.2d 219 (Mo.banc 1964)) and hence a probate matter. The factual complexity and legal sophistication involved, in considering an attorney's action for fee, foreclosure of lien and creditor's bill, are much more comparable to the contract issues, found in Woodrum, infra, to be outside probate jurisdiction, than the "simple matter" of tracing collections into a decedent's bank account. The latter is more in the nature of traditional probate work, which is primarily hunting and gathering, administering and accounting. The breadth of legal subject matter in Appellant's petition is also much greater than in traditional probate work. Appellant's petition is far closer to the action on a probate administrator's bond, found to be outside probate jurisdiction in Matter of Estate of Woodrum, 859 S.W.2d 259 (Mo.App.S.D. 1993), than it is to the "simple matter" of tracing collections into a bank account. Woodrum is much closer to Myers than is Appellant's petition (Appellant's Brief page 6). It follows from Woodrum, a fortiori, that Appellant's action was outside probate jurisdiction. This Court, in finding that anything involved in an estate is within probate jurisdiction, runs counter to Woodrum and Webb, infra. The administrator's bond in Woodrum was involved in the estate, and an action on the

bond must involve the administrator's conduct of a probate function, but Woodrum found the action to be outside probate jurisdiction. If this Court's opinion be correct, Woodrum was wrong, and vice versa. This Court's opinion would convert the probate division into a court of general jurisdiction, at least with respect to each estate it administers, contrary to statute and to Webb v. First National Bank and Trust Company of Joplin, 602 S.W.2d 780 (Mo.App.S.D. 1980).

4. The Court, in denying Appellant's attorney's lien, assumes it is wholly statutory, and relies on Carter v. Stendeback, 482 S.W.2d 534 (Mo.App. 1972) and a notion of its own creation that recourse under Section 473.397 as a class 2 claim takes the place of the lien. In the first place, the lien is not circumscribed by the statutory Section 484.130. It is a common law and equitable property interest as well. It is on recovery, and applies to the assets of the estate because the recovery is used by the probate division to offset distributive shares - probably for the purpose of obstructing Appellant's compensation. The Court's statement on page 6 of its opinion that Appellant "claimed an attorney's lien ... pursuant to Section 484.130 ..." is incorrect. Appellant's petition did not limit itself to a statutory lien. Carter does not apply because it does not involve a recovery for and on behalf of the estate. The Court overlooks Carter's express application to "an attorney's lien ... **based on a judgment rendered against a beneficiary ...."** (quoted in Opinion on page 7; emphasis added). In Carter, there was no right against the estate; here, as the Court expressly holds, there is (Opinion page 10). As the lien attaches to recovery by the estate, it is superior to all classes under Section 473.397. Janice C. Campbell's claim, for legal expenses incurred, is a Class 2 claim. Appellant has a right to recover his fee as an administrative expense (Opinion page

10). But Appellant also has a lien on the recovery he effected for and on behalf of the estate. The Court cites no authority, reason or principle supporting the subordination of an attorney's lien to any other interest.

5. The Court by its opinion suggests Appellant has an adequate remedy at law by reason of the standing of his petition's Count I as a Class 2 administrative expense under Section 473.397. This is naive in the extreme. It is precisely to cure the inadequacies of the law and the probate division's bizarre conduct in the Campbell estate that Appellant needs an equity chancellor with a conscience. This very Court has ruled that Appellant can have no lien. This position, if true, negates the adequacy of Appellant's legal remedy. The probate division has at every significant turn refused to administer the decedent's estate or redress wrongs herein according to law. Since the Joseph F. Campbell estate (No. 30836) was opened on the thirteenth day of September 1988, nearly a year after Mr. Campbell died on the twenty-first day of October 1987, no true inventory has been made and no approved annual settlement has been filed. Hundreds of thousands of dollars of estate assets remain unaccounted for. An administrator ad litem was appointed and has been repeatedly referred to by the probate division as the personal representative and successor to the initial co-personal representatives, but she denies under oath being a person representative even when confronted on the witness stand with a copy of Section 472.010(26), which defines her as such. The probate division in appointing her expressly stayed the motion to suspend the authority of the original co-person representatives; hence their authority remains. Nobody can say with confidence who is responsible for what. The probate division, in an unprecedented outrage, sent away the jury in a discovery of assets action even though the petitioner therein had not rested and had not agreed to settle

(W.D. No. 49245). The judgment arbitrarily imposed by the probate division in the discovery of assets action is a dead letter; the administrator ad litem refuses to enforce it and aids the dissipation of assets that might be used to satisfy it. The probate division denied Appellant's client the right to cross-examine and submit evidence in an action for sale of the estate's only productive assets (W.D. No. 49245). The current action probate division judge has refused to hear objections to the payment of attorney's fees to the administrator ad litem of the estate, conduct that requires another appeal. This estate in probate is a rudderless ship with a full battery of loose cannons on deck. The probate division refuses to hear or consider Appellant or his client. To say that the probate division is a legal remedy is an oxymoron. The probate division is the problem, not the solution. Quite apart from this Court's constitutional obligation to reverse the judgement below, it is far too early in this case for it to render a fully informed decision on this and other non-constitutional issues, with the exception of a reversal under Bracey, paragraph 2 above.

6. In summary, the Court's opinion herein, while artfully drawn, is fatally flawed. The Court took a wrong turn in an early stage of analysis when it refused to address the constitutional issue and tried to base its decision exclusively on non-constitutional grounds. While often wise, such a course leads to error where, as here, a judgment is void for want of due process in arriving at it. The Court's position puts it at odds with the controlling decisions cited above. Even on non-constitutional grounds, Bracey requires outright reversal of an erroneous dismissal, not merely a partial reversal. Trial on the merits is preferred. The Court's misinterpretation of probate jurisdiction and attorneys' liens would unlawfully expand the former and unjustly constrict the latter. The Court has acted prematurely

and mistakenly, under the circumstances of this case, in rejecting Appellant's creditor's bill.

WHEREFORE, Appellant Albert W. L. Moore, Jr., respectfully requests that the Court grant a rehearing in this cause or in the alternative transfer the cause to the Supreme Court.

s/_____
Albert W.L. Moore, Jr. (#18921)
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing was mailed, first-class postage prepaid, this fifth day of July 1995 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____
Albert W. L. Moore, Jr.
Pro Se

MISSOURI COURT OF APPEALS
Western District
1300 Oak Street

KANSAS CITY, MO. 64106-2970

Terence G. Lord
Clerk-Docket Attorney

Area Code 816-889-3600
Fax 816-889-3668

August 1, 1995
IMPORTANT NOTICE

TO: ALL ATTORNEYS OF RECORD

RE: MOORE, ALBERT W. L., JR., APPELLANT
vs.
CAMPBELL, JANICE C., ET AL., DEFENDANT
OVERMAN, REBBECCA LAKE, RESPONDENT

WD# 49694

Please be advised that Appellant's motion for rehearing is OVERRULED and motion for transfer to Supreme Court is DENIED. See Rule 83.03.

TERRENCE [sic] G. LORD
C L E R K D O C K E T
ATTORNEY

cc: Albert W.L. Moore
Rebbecca Lake Overman

IN THE SUPREME COURT OF MISSOURI

ALBERT W. L. MOORE, JR.	)	
	)	Circuit Court
	)	No. CV94-5667
	)	
Plaintiff/Appellant	)	Court of Appeals
	)	No. WD 49694
	)	
	)	Supreme Court
	)	No.
vs.	)	
	)	Court of Appeals
	)	Western District
	)	
	)	Circuit Court for
	)	Jackson County
JANICE C. CAMPBELL, et al.	)	
	)	
Defendants/Respondent	)	

APPLICATION FOR TRANSFER

Is transfer sought prior to opinion or after opinion *

The date the record on appeal was filed September 1, 1994

The date the Court of Appeals opinion was filed June 20, 1995

The date the motion for rehearing was filed July 5, 1995
and ruled on August 1, 1995

The date the application for transfer was filed in the Court of Appeals and ruled on

July 5, 1995
August 1, 1995

Party	Attorney
Albert W. L. Moore, Jr Plaintiff/Appellant	Albert W. L. Moore, Jr. 554 South Ash Independence, Missouri 64053
Janice C. Campbell Defendant	Not represented; dismissed without prejudice.
Joseph E. Campbell Defendant	Les D. Wight 530 East 23rd Street Independence, Missouri 64055 Dismissed without prejudice.
Richard F. Campbell Defendant	Les D. Wight 530 East 23rd Street Independence, Missouri 64055 Dismissed without pre judice.
Rebbecca Lake Overman Defendant/ Respondent	Rebbecca Lake Overman 221 West Lexington Independence, Missouri 64050 Respondent herein.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing application for transfer to the Supreme Court of Missouri of the case styled Moore v. Campbell, WD 49694, was mailed, first-class postage prepaid, this eleventh day of August 1995 to Peggy J. Stevens McGraw, Clerk, Missouri Court of Appeals, Western District, 1300 Oak, Kansas City, Missouri 64106, to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Defendants Joseph E. Campbell and Richard F. Campbell, and to Respondent Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad litem.

Albert W. L. Moore, Jr. #18921
554 South Ash
Independence, Missouri 64053
(816) 254-6070

Pro Se

APPLICATION FOR TRANSFER

COMES NOW Appellant Albert W. L. Moore, Jr., and moves the Court transfer the above cause to the Supreme Court of Missouri for the following reasons:

1. The Court of Appeals decision in Moore v. Campbell, WD 49694, denies Appellant due process of law under Amendments 5 and 14 to the Constitution of the United States of America and Article 1, Sections 10 and 14 of the Constitution of the State of Missouri by affirming in part an order entered without due process.

2. The said decision conflicts with this Court's decision in Bracey v. Monsanto Company, Inc., 823 S.W. 2d 946 (Mo.banc 1992), which calls for simple reversal of dismissal when the petition sets forth any theory supporting relief, not a decision on the merits sans trial in the appellate court.

3. The said decision conflicts with this Court's opinion in In re Estate of Myers, 376 S.W. 2d 219 (Mo.banc 1964) and the opinions of another appellate court by holding the probate division to be effectively a court of general jurisdiction in respect of every estate it handles.

4. The said decision conflicts with decisions of this Court and another appellate court, which support attorneys' liens on recovery and the equitable enforcement thereof, by carving out probate administrators as an unjustified exception.

5. As probate touches and concerns nearly everybody, it is of general interest and importance that constitutional due process be accorded all litigants therein.

6. Similarly, it is of general interest and importance that the jurisdiction of probate be more precisely defined, which requires a continuing process of inclusion and exclusion of factual situations.

7. It is of general interest and importance that counsel in probate adversary matters have the rights afforded counsel in other litigation to recover their compensation. Otherwise, litigants could find it difficult to find capable and diligent lawyers to represent them in redressing probate grievances.

8. Appellant filed an action for attorney's fee and enforcement of his lien against a beneficiary, the two co-personal representatives, and the administrator ad litem of the decedent's estate on behalf of which Appellant had secured a judgement in a discovery of assets trial. The cause was transferred, without notice to Appellant, from the court of general jurisdiction in which it was filed to the probate division, which dismissed the administrator ad litem in reliance on Carter v. Stendeback, 482 S. W. 2d 534 (Mo. App. 1972). Appellant appealed. The appellate court reversed as to Court I, action for fee, but sustained the dismissal as to Court II, foreclosure of lien, and Court III, creditor's bill.

9. Attached hereto are the following:

a. a copy of the opinion of the Court of Appeals at Tab 1;

b. a copy of the motion and suggestions for rehearing or transfer filed in the Court of Appeals at Tab 2;

c. a copy of the motion and suggestions for rehearing or transfer filed in the Court of Appeals at Tab 3;

d. suggestions in support of this application at Tab 4; and

e. proof of notice to the Clerk of the Court of Appeals and each opposing party of this application for transfer at Tab 5.

WHEREFORE, Appellant Albert W. L. Moore, Jr., prays this Court issue its order of transfer directing the judges of the Missouri Court of Appeals, Western District, to certify to this Court the record in said mentioned cause and, upon consideration thereof, to quash said judgement of the said Court of Appeals and give such other and further relief as may seem meet and proper in the premises.

ALBERT W. L. MOORE, JR. #18921
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

Missouri Court of Appeals,
Western District.

June 20, 1995.

Albert W.L. MOORE, Jr., Appellant,

v.

Janice C. CAMPBELL, et al., and
Rebbecca Lake Overman,
Respondents.

No. WD 49694.

Albert W.L. Moore, Jr., pro se.

Kevin R. Thomas and Rebbecca Lake Overman, Independence, for Administrator Ad Litem, Rebbecca Lake Overman.

Before BRECKENRIDGE, P.J., and ELLIS and LAURA DENVIR STITH, JJ.

ELLIS, Judge.

Albert W.L. Moore, Jr. (Moore), an attorney, appeals from an Order of the Jackson County Circuit Court, Probate Division dismissing defendant, Rebbecca L. Overman (Overman), administrator ad litem of the estate of joseph f. campbell, deceased, from his suit to recover attorney's fees. Moore's action was based on his representation of Janice C. Campbell (Campbell) in a discovery of assets action on behalf of the Joseph F. Campbell estate. As a result of the discovery of assets proceeding, a judgment of over two hundred thousand dollars ($200,000.00) was entered in favor of Overman as administrator ad litem of the estate.

Janice C. Campbell and her brothers, Joseph E. Campbell and Richard F. Campbell are equal beneficiaries in the estate of their father, Joseph F. Campbell. The two brothers are also co-personal representatives of the estate. Moore demanded payment of his attorney's fees from Janice C. Campbell, Joseph E. Campbell and Richard F. Campbell, as well as from Overman as administrator ad litem. His demands went unheeded.

On March 15, 1994, Janice C. Campbell filed a claim in the probate division against the Joseph F. Campbell estate for legal expenses incurred on behalf of the estate, namely the services of Mr. Moore in the discovery of assets action. On March 17, 1994, Moore filed a petition in Division 2 of the circuit court to recover attorney's fees against defendants Janice C. Campbell, Joseph E. Campbell, individually and as co-personal representative, Richard F. Campbell, individually and as co-personal representative, and Rebbecca Lake Overman, administrator ad litem.

Both Campbell's claim, seeking payment of seventy-six thousand twenty-three dollars and forty-six cents ($76,023.46), and Moore's petition, asking for sixty-one thousand

eight hundred thirty dollars and twenty-eight cents ($61,830.-28), were for his legal services during the period from September 3, 1992 until February 28, 1994. Campbell's claim included fourteen thousand one hundred ninety-three dollars and eighteen cents ($14,193.18) that she had already paid to Moore. These payments were deducted from the total in Moore's petition and explain the difference in amounts sought.

Overman filed a Motion to Dismiss Moore's petition on May 2, 1994. In her motion Overman stated that there was a duplicity of actions in that Moore had filed in action in the circuit court and Campbell had filed a claim in the probate division for the same attorney's fees. Therefore, she argued, Moore's petition should be dismissed since he had a probate claim on file with the probate division which sought the same relief. On June 9, 1994, Moore's action was transferred from Division 2 to Division 19, the probate division. The reason stated in the transfer order was that "plaintiff [Moore] has a pending probate matter in Division 19." Moore states that he did not receive notice of this transfer.

The probate division issued an order dismissing Defendant Overman as administrator ad litem from Moore's action for attorney's fees. The order did not dismiss the other defendants from the action because they did not join Overman in the motion to dismiss. However, on January 25, 1995, Moore dismissed the remaining defendants without prejudice, thereby making the probate court's order a final judgment from which he brought this appeal.

In reviewing the dismissal of a petition, we sustain same if any ground supports the motion, regardless of whether the trial court relied on that ground. Delmain v. Meramec Valley R-III School Dist., 671 S.W.2d 415, 416 (Mo.App.1984). We accord the allegations in the petition every fair and reasonable intendment and, if the averments state a claim calling for invocation of substantive law principles which entitle plaintiff to relief, we will reverse the dismissal of the petition. Id.

Moore raises four points on appeal all of which claim error by the probate division in dismissing Overman from the cause below. In his first point, Moore claims that the probate division of the circuit court did not have jurisdiction to dismiss Overman because the cause below was not a probate matter or probate business. He argues that the probate division's jurisdiction is limited to "probate business" or "probate matters" and that his petition involved neither.

The Constitution of the State of Missouri provides that probate judges of first class counties shall, as of January 2, 1979, "become circuit judges of their respective circuits ... and shall have the same powers and jurisdiction as judges of the circuit court." **Mo. Const. art. V, § 27.4(a).** The elimination of restrictions on the legislature under the former Section 16 or Article V of the Missouri Constitution, "has given the legislature unlimited authority in determining the nature and extent of probate division jurisdiction." 5 J. Borron and F. Hanna, Missouri Practice: Probate Law and Practice 534 (1988).

The legislature's determination of the jurisdiction of the probate division is found in § 472.020 which states that "[t]he probate division of the circuit court may hear and determine all matters pertaining to probate business...." Section 472.030 provides that the probate division has "the same legal and equitable powers to effectuate and to enforce its orders, judgments and decrees in probate matters as circuit judges have in other matters...." In considering these statutory provisions, the court, in Webb v. First Nat'l Bank & Trust Co., 602 S.W.2d 780 (Mo.App. 1980), found that "the phrase 'probate matters' is not susceptible of concise definition." Id. at 782. It went on to opine that §§ 472.020 and 472,030 were not meant to convert the probate court into a court of general jurisdiction. Id. And, in In re Estate of Woodrum, 859 S.W.2d 259 (Mo.App. 1993), the court held that the probate court did not have jurisdiction to decide an action to recover on a surety bond covering a conservator because it was a contract action. In the case at bar, Moore argues that since the underlying matter was an action to enforce equitable and statutory liens for professional services, it should be considered to be more like an action on a conservator's bond than like a probate matter. We disagree.

In In re Estate of Myers, 376 S.W.2d 219, 224 (Mo. banc 1964), our Supreme Court stated:

> We therefore must conclude that it was intended that this section [§ 472,030] would give probate courts complete and unrestricted equitable powers "in probate matters." The difficulty in construction may likely arise in determining the proceedings coming within the classification of "probate matters." It is suggested by Judge Welch that "a controversy which necessarily is involved in the winding

> up of the affairs of a decedent, is a matter pertaining to probate business***." 1963 Wash.U.L.Qr. 346. This court has heretofore stated the general rule that "[m]atters of probate business, as commonly understood and under all the authorities, pertain to the proving of wills, the appointment of guardians and curators, and the administration and settlement of estates of decedents, incompetents and the like." Douney v. Schrader, 353 Mo. 40, 182 S.W.2d 320, 323 [(Mo. banc 1944)]. It is our view that the scope of matters which may be included in the phrase, "probate matters," will not be fully and completely determined until various questions in that regard are, from time to time, presented to the appellate courts for judicial decision. In the case at bar, it may confidently be said that the simple matter of tracing the collections made by Mr. Myers into his bank account, which shortly thereafter came into the possession of his executrix, is a proper exercise of equitable powers by the probate court in a "probate matter."

Likewise, we can say with confidence that the award of attorney's fees for professional services rendered in a discovery of assets proceeding on behalf of a decedent's estate during the course of administration is a "probate matter." Thus, Moore's contention that the probate division had no jurisdiction to dismiss Overman because the underlying cause be not a probate matter is without merit. Point denied.

In his second point on appeal, Moore argues that the probate division's order was founded on the idea that his petition was based exclusively on a statutory attorney's lien when, in fact, it was not. His third point claims that the order was based on a false legal proposition that an administrator ad litem of a decedent's estate cannot as a matter of law be subject to an attorney's lien on a recovery for the estate. The two points are related and will be addressed together.

Moore's petition in circuit court was in three counts. Count I alleged that he was retained by Janice C. Campbell to pursue a discovery of assets proceeding on behalf of the Joseph F. Campbell Estate; that he provided valuable legal services resulting in a judgment in favor of the estate in excess of $200,000; that his fees were reasonable; that demand for payment had been made but payment had not been forthcoming; and praying for a judgment for the value of his services. In Count II, Moore claimed an attorney's lien for the value of his services pursuant to § 484.130 and sought foreclosure thereof against "the proceeds of judgment and the current assets of the estate." And, in Count III, Moore alleged that the judgment in the discovery of assets proceeding was void because of failure to comply with § 473.085; that Overman proposed to eviscerate the fund "now in custodia legis;" that her actions would preclude collection of the judgment proceeds; and as a result, would preclude payment of his fees. In his prayer, he asked that Overman be enjoined from selling any assets or paying any claims

until final settlement of the estate; that Overman be directed to pay his fees as part of the final settlement; that a receiver be appointed; and for other relief, description of which is unnecessary to disposition of this appeal.

Overman's motion to dismiss the petition alleged that Janice C. Campbell, "by and through her attorney, Albert W.L. Moore's attorney's fees on or about March 10, 1994; that Moore's petition was filed on March 21, 1994; that the claim and the petition were for the same relief; and that under the doctrine of abatement, Moore's petition should be dismissed.

In its order dismissing the petition, the probate division concluded that all three counts of Moore's petition were predicated on an alleged attorney's lien pursuant to § 484.130. It then ruled, relying on Carter v. Stendeback, 482 S.W.2d 534 (Mo.App. 1972), as authority, that an attorney's lien cannot be imposed on the undistributed assets of the estate, and therefore, that the motion to dismiss must be sustained. Thus Moore's arguments in his points II and III are to the effect that the court's dismissal of his petition was erroneous because all three counts were not based on an alleged attorney's lien, and secondly that even if they were, the court erred in finding that the judgment could not be subjected to an attorney's lien.

We first address the probate division's stated reasons for dismissing the petition. As noted, the court relied on Carter, 482 S.W.2d 534, in reaching its decision. In that case, John R. Hardcastle died, survived by his second wife, Nellie, and Martha Stendeback, his stepdaughter. Hardcastle had drawn a will in 1954 leaving his entire estate to his first

wife, Virginia, Martha's mother. It further provided that if Virginia predeceased him (which in fact occurred), the estate was left to Martha. When Hardcastle died, the will could not be located, and an intestate estate was opened with Nellie's son, John D. Powell, acting as administrator.

At that point, Martha retained the services of plaintiff Carter, an attorney, and entered into a contract providing for a contingent fee of one-third of any sum received by or on behalf of Martha from the Hardcastle estate "by way of suit or compromise, inheritance or devise, or in any other form." Id. at 535. As a result of Carter's efforts, Hardcastle's 1954 will was ultimately located and admitted to probate. Nellie elected to take against the will, thereby becoming entitled to one-half of the estate, and Martha became entitled to the other half. Some time thereafter, Martha terminated Carter's services and, although his fee was discussed, they could not reach an agreement and he filed an action against Martha and the administrator of Hardcastle's estate. The case was tried to the court and Carter was awarded judgment against Martha and the estate, and the judgment was declared to be a lien on Martha's distributive share of the estate.

On appeal, the parties agreed that the trial court erred in awarding a money judgment to against the administrator of the estate. The Eastern District went on to hold that "an attorney's lien does not properly lie against the undistributed assets of an estate, based on a judgment rendered against a beneficiary." Id. at 537. In doing so, the court observed that Carter's claim was not a debt owed by the estate, but rather by a beneficiary of the estate. Id.

In the case at bar, the probate division construed Carter as standing "for the proposition that [Moore] cannot assert an attorney's lien against the undistributed assets of the

Campbell estate...." And, having previously determined that all three counts of Moore's petition were "predicated upon an alleged attorney's lien," the court dismissed all counts.

The probate division erred as a matter of law in finding that all three counts of Moore's petition involved imposition of an attorney's lien pursuant to § 484.130. "[T]he clear, unambiguous language of the statue provides that '[f]rom the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a *lien upon his client's cause of action or counterclaim.*' § 484.130 (emphasis added)." Kansas City Area Transp. Auth. v. 4550 Main Assocs., 893 S.W.2d 861, 868-69 (Mo.App.1995). The probate division treated the attorney's lien as being one and the same as a cause of action for attorney's fees. Such is not the case. Section 484.130 merely "affords an attorney protection for services rendered by creating a lien in his favor...." Id. at 867 (quoting Satterfield v. Southern Ry., 287 S.W.2d 395, 397 (Mo.App.1956)). The fact that an attorney has a lien against his client's cause of action does not preclude the attorney from collecting his fees by other means, such as an action in quantum meruit, without attempting to foreclose his lien. Indeed, "[i]t is only if the client recovers on his cause of action that there will be a tangible asset ... from which the attorney fee can be collected by foreclosing the lien." Id. at 869. Thus, Count I of Moore's petition, which sought judgment for his attorney fees, did not implicate any alleged attorney's lien. It merely prayed for judgment in the amount of the fees, plus interest and court costs.

Missouri courts generally hold that expenses and fees "incurred by a beneficiary of an estate, rather than the personal representative, must be shown to be beneficial to the estate as a whole rather than to just individuals interested

therein." In re Estate of Murray, 682 S.W.2d 857, 858 (Mo.App.1984) In Murray, a beneficiary of the estate retained counsel and brought a successful action to remove the personal representative and compel an accounting. The beneficiary then sought reimbursement of her attorney's fees and expenses from the estate. In affirming the trial court's award of fees and expenses, this court stated:

> As a general principle, the allowances of attorney fees under the criteria of "equitable balancing of benefits" is governed by the rule ... that "very unusual circumstances" must be shown.... As to this specific situation, where a beneficiary of an estate is seeking an allowance for attorney fees from the estate upon an action for an accounting from and removal of a personal representative, there should exist the requirement that not only must the action have been successful, but that the result is beneficial to the estate.

Id. at 858-59. The foregoing language was quoted with approval by the Eastern District of this court, in a case involving similar facts in In re Estate of Chrisman, 723 S.W.2d 484, 487 (Mo.App.1986).

In the instant appeal, Janice C. Campbell's action for discovery of assets was extremely beneficial to the estate as a whole, recovering in excess of $200,000 for the estate. The attorney's fees incurred in that action, therefore, meet the Murray test for allowance of such fees.

We then turn to Count I of Moore's petition to determine if it stated a cause of action for recovery of his fees.

> To recover on [the] theory [of quantum meruit], plaintiff must plead and prove that it provided to defendant materials or services at the request or with the acquiescence of defendant, that those materials or services had a certain reasonable value, and that defendant despite demands of plaintiff, has failed and refused to pay the reasonable value of those materials and labor.

First Place, Inc. v. Douglas Toyota III, Inc., 801 S.W.2d 721, 723 (Mo.App.1990) (quoting Berra v. Papin Builders, Inc., 706 S.W.2d 70, 73 (Mo.App.1986)). Giving the allegations of Count I their fair and reasonable intendment, Moore stated a cause of action in quantum meruit. The probate division therefore erred in dismissing it as seeking to impose an attorney's lien on the undistributed assets of the Campbell estate.

Count II of the petition, on the other hand, alleges an attorney's lien and, although unartfully drawn, the gist of the prayer is to impose the lien on the proceeds of the discovery of assets judgment. As to this Count, the court below correctly found that "an attorney's lien does not properly lie against the undistributed assets of an estate." Carter v. Stendeback, 482 S.W.2d at 537. While Carter dealt with an alleged attorney's lien based on a judgment rendered against a beneficiary, the same rationale applies to a case such as this where the attorney's fees were incurred prosecuting an action that ultimately resulted in a favorable judgment for the estate. This is so because the probate code establishes the priorities in which estate claimants are paid.

Section 473.397 classifies claims and statutory allowances, and § 473.430 provides that claims and statutory allowances shall be paid in the order specified in § 473.397. The code provides, in effect, for a marshaling of assets, and then directs the use of those assets for payment of claimants in the order of priority. Thus, it would be inconsistent with the scheme of the probate code to permit imposition of an attorney's lien on estate assets. Moreover, attorneys performing services for a probate estate are afforded protection because such fees are an expense of administration. In re Sternberg's Estate, 204 S.W.2d 761, 764 (Mo.1947). Expenses of administration are class 2 claims, second only in order of payment to court costs, which are class 1. § 473.397.

As noted previously, the attorney lien statute is designed to afford the attorney protection for services rendered by creating a lien in his favor. In the context of probate administration, however, the attorney is already granted protection for fees incurred on behalf of the estate. Therefore, since as matter of law, an attorney's lien cannot be imposed on the assets of the estate, the probate division did not err in dismissing Count II of his petition.

As to Count III of Moore's petition, he designates it a "creditor's bill." While, as noted, the pleading is rather unartfully drawn, it appears he is alleging that Overman proposes inequitable offsets for distributive shares of the estate which would largely preclude actual collection of the discovery of assets judgment and that by virtue thereof, there may be insufficient assets in the estate to pay his fees; that the estate assets are not subject to levy; and that he has no adequate remedy at law.

> Missouri recognizes the creditor's bill as a viable remedy. It is an equitable remedy available to a creditor who seeks to enforce the payment of debts out of assets that cannot be reached by traditional means of execution on a judgment established in a suit at law. The creditor's bill may be brought by an unsecured creditor to set aside a transfer by the debtor's hidden assets, subjecting that property to the payment of the debt.

Shockley v. Harry Sander Realty Co., 771 S.W.2d 922, 924 (Mo.App.1989) (citations omitted).

Applying the foregoing to Count III of Moore's petition, and giving his allegations their fair and reasonable intendment, we cannot say that Count III states a claim upon which relief in the nature of a creditor's bill can be granted. Count III alleges that Overman is seeking permission from the probate division of the circuit court for her actions. The probate division is certainly aware of its own judgment and Moore's claim to payment of his fees from the estate. The allegations do not cry "out for equitable relief." Id. We therefore conclude that the trial court did not err in dismissing Count III of the petition.

We must briefly address Overman's contention that the dismissal of all three counts of the petition was justified by the doctrine of abatement. This was the ground for dismissal specified in her motion to dismiss, and she argues it in this appeal:

> The principle of abatement bears the enlightening appellation of "pending action doctrine." It comes into being in the situation in which a subsequent suit is instigated by the plaintiff in a previous suit. Treatment of the second action is generally as follows: "[W]here two actions involving the same subject matter between the same parties are brought in courts of concurrent jurisdiction, the court in which service of process is first obtained acquires exclusive jurisdiction and may dispose of the entire controversy without interference from the other." State ex rel. General Dynamics v. Luten, 566 S.W.2d 452, 458 (Mo. banc 1978). Abatement is also properly applied to a later action between the same parties for the same cause of action brought in the same court or a court of another jurisdiction. See State ex rel. Industrial Properties, Inc. v. Weinstein, 306 S.W.2d 634, 637-38 (Mo.App.1957).

Overman contends that Janice C. Campbell's claim for allowance of Moore's attorney fees, filed in the probate division prior to Moore's petition in circuit court, seeks the same relief as the petition, and since the claim was filed first, Overman reasons that the second action must be dismissed.

We disagree. First the parties to the claim, and the parties to the petition are not the same. Janice C. Campbell filed the claim in the probate division seeking allowance of the fees Moore charged in representing her in the discovery of assets proceeding. Moore is not a party to that action.

He has no control over how or when the claim will be prosecuted. On the other hand, in the circuit court action he filed, Moore is the plaintiff. Janice C. Campbell is not a party. Overman is the only mutual party in both the claim and the petition. Thus, the pending action doctrine is inapplicable. However, we would point out that the claim and Moore's action may be consolidated for trial pursuant to Rule 66.01(b), and, of course, a double recovery is prohibited as "a species of unjust enrichment and is governed by the same principles of preventive justice." Kincaid Enters., Inc. v. Porter, 812 S.W.2d 892, 900 (Mo.App.1991).

Because of our disposition of the case, we need not address Moore's other points, alleging violation of his due process rights. The trial court's dismissal of Counts II and III of Moore's petition is affirmed. The trial court's dismissal of Count I of Moore's petition is reversed, and the case is remanded for further proceedings.

All concur.

IN THE CIRCUIT COURT OF APPEALS
WESTERN DISTRICT

ALBERT W.L. MOORE, JR.	)	
	)	
Plaintiff/Appellant	)	
	)	
vs.	)	WD 49694
	)	Cir.Ct.
	)	No. CV94-5667
	)	
JANICE C. CAMPBELL, ET AL.	)	
	)	
Defendants/Respondants	)	

MOTION FOR REHEARING OR IN THE ALTERNATIVE
FOR TRANSFER TO THE SUPREME COURT

COMES NOW Appellant Albert S. L. Moore, Jr., pro se, and moves pursuant to Rules 83.02 and 84.17 of the Rules of Civil Procedure that this Court grant a rehearing in this cause or in the alternative transfer this cause to the Supreme Court of Missouri and in support thereof states:

1. A rehearing in this case should be granted because:

a. The Court as shown by its opinion overlooks the primacy and effect of the denial of constitutional due process in this case. Failure to comply with due process renders a judgment void, even if it be justifiable on the merits.

b. The controlling Supreme Court of Missouri decision calls for the reversal of the dismissal below, not a mere partial reversal, when any theory supports relief.

c. The Court as shown by its opinion misinterprets the law of probate jurisdiction.

d. The Court as shown by its opinion misinterprets the law of attorneys' liens.

e. The Court as shown by its opinion overlooks and rashly assumes facts crucial to the determination of the adequacy of the legal remedy in respect of Appellant's creditor's bill below.

2. Reasons for the foregoing are more fully set forth in the suggestions in support hereof filed concurrently herewith and by this reference incorporated herein and made part hereof.

3. In the event that the foregoing request for rehearing be denied, this cause should be transferred to the Supreme Court because:

a. It is of general interest or importance that constitutional due process be accorded all litigants.

b. It is of general interest or importance that the jurisdiction of probate, which touches and concerns so many citizens, be more precisely defined. The inclusion or exclusion of actions for attorneys' compensation for probate work can provide significant guidance to courts and counsel.

c. It is of general interest or importance whether counsel in adversary probate matters have the full right afforded counsel in other litigation to recover their compensation. This can affect the ability of people who need assistance of counsel in such matters to find capable and diligent lawyers willing to represent them.

d. Similarly, it is of general interest or importance that relegating counsel in such matters to the tender mercies of a probate division that wants to do a quick and dirty settlement, instead of hearing and considering evidence of wrongdoing, will tend to reduce the pool of capable and diligent counsel available to members of the public seeking redress of grievances in the probate division.

WHEREFORE, Appellant Albert W. L. Moore, Jr., respectfully requests that the Court grant a rehearing in this cause or in the alternative transfer the cause to the Supreme Court.

Albert W.L. Moore, Jr. (#18921)
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing was mailed, first-class postage prepaid, this fifth day of July 1995 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

Albert W. L. Moore, Jr.
Pro Se

IN THE CIRCUIT COURT OF APPEALS
WESTERN DISTRICT

ALBERT W.L. MOORE, JR.	)	
	)	
Plaintiff/Appellant	)	
	)	
vs.	)	WD 49694
	)	CIR.CT.
	)	NO. CV94-5667
	)	
JANICE C. CAMPBELL, ET AL.	)	
	)	
Defendants/Respondants	)	

SUGGESTIONS IN SUPPORT OF MOTION FOR REHEARING OR IN THE ALTERNATIVE FOR TRANSFER TO THE SUPREME COURT

COMES NOW Appellant Albert W. L. Moore, Jr., and for his suggestions in support of his motion for rehearing or in the alternative for transfer to the Supreme Court states and shows the Court as follows:

1. While refreshingly lucid and artfully done, most of the Court's opinion is unnecessary. Its opinion overlooks the primacy of the constitutional due process requirement. The Court mistakenly refrains from addressing the due process issue (Opinion, page 13). A judgment arrived at in violation of due process is void, even if it can be justified on the merits (16D C.J.S. Constitutional Law Section 1168, citing Inland Steel Co. v. N.L.R.B., C.C.A. 7, 109 F.2d 9 and Ackermann v. U.S., C.A. Tex., 178 F2d 983, affirmed 71 S.CT. 209, 340 U.S. 193, 95 L. Ed. 207, followed in

179 F.2d 236, affirmed 71 S.CT. 209, 340 U.S. 193, 95 L. Ed. 207). Hence the due process issue is outcome - determinative and unavoidable, unless the Court disposes of the appeal under Bracey, infra paragraph 2. The Court odes not escape the need to address the due process issue by purporting to find that the probate division had jurisdiction, even if such finding were valid. The Court overlooks the fact that Appellant also cited lack of notice, denial of opportunity to be heard, and denial of the right to an impartial tribunal (Appellant's Brief pages 3, 11-13). Notice, opportunity to be heard and an impartial tribunal are essential to due process (Appellant's Brief pages 11-13). State courts must accord parties due process in determining the adjective and substantive law of the state (Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 50 S.Ct. 451, 281 U.S. 673, 74 L. Ed. 1107, conformed to 42 S.W.2d 23, 328 Mo. 836 (1930)). A party must have the opportunity to contest the propriety of every step of the process (16C C.J.S. Constitutional Law Section 945, citing State v. Broaddus, 289 S.W. 792, 795, 315 Mo. 1279 and City of St. Louis v. Missouri Pac. R. Co., 211 S.W. 671, 278 Mo. 205). A right of action is property entitled to protection against deprivation without due process of law (16D C.J.S. Constitutional Law Section 1139 citing Sliosbert v. New York Life Ins. Co., 216 N.Y.S. 215, 217 App. Div. 67, affirmed 155 N.E. 749, 244 N.Y. 482 and 155 N.E. 913, 244 N.Y. 599). If Appellant is correct on any of these points - jurisdiction, notice and opportunity to be heard, or lack of an impartial tribunal - he is entitled to a reversal of the judgment in its entirety. No further analysis is needed. The Court need not lavish its time and loving (albeit misdirected) craftsmanship on the other issues at this early stage of the litigation.

2. The Court overlooks Bracey v. Monsanto Company, Inc., 823 S.W.2d 946 (Mo.banc 1992), which requires that a dismissal be reversed when the petition sets forth any theory supporting relief. Bracey does not call for a mere partial reversal of the erroneous dismissal below.

3. The Court by its opinion finds an attorney's action to recover fee, foreclosure of lien and creditor's bill to be equivalent to "the simple matter of tracing the collections made by Mr. Myers into his bank account ...." (Opinion pages 4 and 5, quoting the opinion in In re Estate of Myers, 376 S.W.2d 219 (Mo.banc 1964)) and hence a probate matter. The factual complexity and legal sophistication involved, in considering an attorney's action for fee, foreclosure of lien and creditor's bill, are much more comparable to the contract issues, found in Woodrum, infra, to be outside probate jurisdiction, than the "simple matter" of tracing collections into a decedent's bank account. The latter is more in the nature of traditional probate work, which is primarily hunting and gathering, administering and accounting. The breadth of legal subject matter in Appellant's petition is also much greater than in traditional probate work. Appellant's petition is far closer to the action on a probate administrator's bond, found to be outside probate jurisdiction in Matter of Estate of Woodrum, 859 S.W.2d 259 (Mo.App.S.D. 1993), than it is to the "simple matter" of tracing collections into a bank account. Woodrum is much closer to Myers than is Appellant's petition (Appellant's Brief page 6). It follows from Woodrum, a fortiori, that Appellant's action was outside probate jurisdiction. This Court, in finding that anything involved in an estate is within probate jurisdiction, runs counter to Woodrum and Webb, infra. The administrator's bond in Woodrum was involved in the estate, and an action on the

bond must involve the administrator's conduct of a probate function, but Woodrum found the action to be outside probate jurisdiction. If this Court's opinion be correct, Woodrum was wrong, and vice versa. This Court's opinion would convert the probate division into a court of general jurisdiction, at least with respect to each estate it administers, contrary to statute and to Webb v. First National Bank and Trust Company of Joplin, 602 S.W.2d 780 (Mo.App.S.D. 1980).

4. The Court, in denying Appellant's attorney's lien, assumes it is wholly statutory, and relies on Carter v. Stendeback, 482 S.W.2d 534 (Mo.App. 1972) and a notion of its own creation that recourse under Section 473.397 as a class 2 claim takes the place of the lien. In the first place, the lien is not circumscribed by the statutory Section 484.130. It is a common law and equitable property interest as well. It is on recovery, and applies to the assets of the estate because the recovery is used by the probate division to offset distributive shares - probably for the purpose of obstructing Appellant's compensation. The Court's statement on page 6 of its opinion that Appellant "claimed an attorney's lien ... pursuant to Section 484.130 ..." is incorrect. Appellant's petition did not limit itself to a statutory lien. Carter does not apply because it does not involve a recovery for and on behalf of the estate. The Court overlooks Carter's express application to "an attorney's lien ... **based on a judgment rendered against a beneficiary ....**" (quoted in Opinion on page 7; emphasis added). In Carter, there was no right against the estate; here, as the Court expressly holds, there is (Opinion page 10). As the lien attaches to recovery by the estate, it is superior to all classes under Section 473.397. Janice C. Campbell's claim, for legal expenses incurred, is a Class 2 claim. Appellant has a right to recover his fee as an administrative expense (Opinion page

10). But Appellant also has a lien on the recovery he effected for and on behalf of the estate. The Court cites no authority, reason or principle supporting the subordination of an attorney's lien to any other interest.

5. The Court by its opinion suggests Appellant has an adequate remedy at law by reason of the standing of his petition's Count I as a Class 2 administrative expense under Section 473.397. This is naive in the extreme. It is precisely to cure the inadequacies of the law and the probate division's bizarre conduct in the Campbell estate that Appellant needs an equity chancellor with a conscience. This very Court has ruled that Appellant can have no lien. This position, if true, negates the adequacy of Appellant's legal remedy. The probate division has at every significant turn refused to administer the decedent's estate or redress wrongs herein according to law. Since the Joseph F. Campbell estate (No. 30836) was opened on the thirteenth day of September 1988, nearly a year after Mr. Campbell died on the twenty-first day of October 1987, no true inventory has been made and no approved annual settlement has been filed. Hundreds of thousands of dollars of estate assets remain unaccounted for. An administrator ad litem was appointed and has been repeatedly referred to by the probate division as the personal representative and successor to the initial co-personal representatives, but she denies under oath being a person representative even when confronted on the witness stand with a copy of Section 472.010(26), which defines her as such. The probate division in appointing her expressly stayed the motion to suspend the authority of the original co-person representatives; hence their authority remains. Nobody can say with confidence who is responsible for what. The probate division, in an unprecedented outrage, sent away the jury in a discovery of assets action even though the petitioner therein had not rested and had not agreed to settle

(W.D. No. 49245). The judgment arbitrarily imposed by the probate division in the discovery of assets action is a dead letter; the administrator ad litem refuses to enforce it and aids the dissipation of assets that might be used to satisfy it. The probate division denied Appellant's client the right to cross-examine and submit evidence in an action for sale of the estate's only productive assets (W.D. No. 49245). The current action probate division judge has refused to hear objections to the payment of attorney's fees to the administrator ad litem of the estate, conduct that requires another appeal. This estate in probate is a rudderless ship with a full battery of loose cannons on deck. The probate division refuses to hear or consider Appellant or his client. To say that the probate division is a legal remedy is an oxymoron. The probate division is the problem, not the solution. Quite apart from this Court's constitutional obligation to reverse the judgement below, it is far too early in this case for it to render a fully informed decision on this and other non-constitutional issues, with the exception of a reversal under Bracey, paragraph 2 above.

6. In summary, the Court's opinion herein, while artfully drawn, is fatally flawed. The Court took a wrong turn in an early stage of analysis when it refused to address the constitutional issue and tried to base its decision exclusively on non-constitutional grounds. While often wise, such a course leads to error where, as here, a judgment is void for want of due process in arriving at it. The Court's position puts it at odds with the controlling decisions cited above. Even on non-constitutional grounds, Bracey requires outright reversal of an erroneous dismissal, not merely a partial reversal. Trial on the merits is preferred. The Court's misinterpretation of probate jurisdiction and attorneys' liens would unlawfully expand the former and unjustly constrict the latter. The Court has acted prematurely

and mistakenly, under the circumstances of this case, in rejecting Appellant's creditor's bill.

WHEREFORE, Appellant Albert W. L. Moore, Jr., respectfully requests that the Court grant a rehearing in this cause or in the alternative transfer the cause to the Supreme Court.

Albert W.L. Moore, Jr. (#18921)
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing was mailed, first-class postage prepaid, this fifth day of July 1995 to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Joseph E. Campbell and Richard F. Campbell, and to Rebbecca Lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

Albert W. L. Moore, Jr.
Pro Se

MISSOURI COURT OF APPEALS
Western District
1300 Oak Street

KANSAS CITY, MO. 64106-2970

Terence G. Lord
Clerk-Docket Attorney

Area Code 816-889-3600
Fax 816-889-3668

August 1, 1995
IMPORTANT NOTICE

TO: ALL ATTORNEYS OF RECORD

RE: MOORE, ALBERT W. L., JR., APPELLANT
vs.
CAMPBELL, JANICE C., ET AL., DEFENDANT
OVERMAN, REBBECCA LAKE, RESPONDENT

WD# 49694

Please be advised that Appellant's motion for rehearing is OVERRULED and motion for transfer to Supreme Court is DENIED. See Rule 83.03.

TERRENCE [sic] G. LORD
CLERK DOCKET
ATTORNEY

cc: Albert W.L. Moore
Rebbecca Lake Overman

IN THE SUPREME COURT OF MISSOURI

ALBERT W. L. MOORE, JR.	)
	) Circuit Court
	) No. CV94-5667
Plaintiff/Appellant	)
	) Court of Appeals
	) No. WD49694
vs.	)
	) Supreme Court
	) No.
	)
	) Court of Appeals
	) Western District
	)
	) Circuit Court
	) for Jackson County
JANICE C. CAMPBELL, et al.	)
	)
Defendants/Respondent	)

SUGGESTIONS IN SUPPORT OF APPLICATION FOR TRANSFER

COMES NOW Appellant Albert W. L. Moore, Jr., and for his suggestions in support of his motion to transfer the above cause to the Supreme Court of Missouri states and shows the Court as follows:

1. The dismissal below was void for want of due process (Tab 2 Suggestions pages 1 and 2), a point not treated by the Appellate Court (Tab 1 page 13). A judgement arrived at in violation of due process is void, even if it can be justified on the merits (16D C.J.S. Constitutional Law Section 1168, citing Inland Steel Co. v. N.L.R.B., C.C.A. 7, 109 F.2d 9 and Ackermann v. U.S., C.A. Tex., 178 F.2d 983, affirmed 71 S. CT. 209, 340 U.S. 193, 95 L. Ed. 207, followed in 179 F. 2d 236, affirmed 71 S. CT. 209, 340 U.S. 193, 95 L. Ed. 207). Hence the appellate court was constitutionally bound to consider the want of due process in arriving at the probate order and to reverse the entire order arrived at without due process. This Court should take up this cause to keep inferior courts within constitutional bounds as part of its general superintending power under Article 5, Section 4 of the Constitution of the State of Missouri, unless it can reach the same result without considering the constitutional issue, such as reversal under Bracey, infra, paragraph 2).

2. Bracey v. Monsanto Company, Inc., 823 S.W.2d 946 (Mo.banc 1992) requires that a dismissal be reversed when the petition sets forth any theory supporting relief. It does not call for the appellate court to sustain such portion of the dismissal as it deems worthy. The appellate court's decision herein conflicts with Bracey. The appellate court's decision herein is not economical of appellate judges' time; under Bracey, analysis would stop after the determination that Court I could be maintained; there would be no need to deal with the other counts at that stage.

3. This Court's opinion in In re Estate of Myers, 376 S.W.2d 219 (Mo.banc 1964) found "the simple matter of tracing the collections made by Mr. Myers into his bank account ...." to be a probate matter. Such language hardly warrants the sweeping of attorneys' liens on discovery of asset recoveries into probate jurisdiction. Such would also be inconsistent with Webb v. First National Bank and Trust Company of Joplin, 602 S.W.2d 780 (Mo.App.S.D. 1980) and Matter of Estate of Woodrum, 859 S.W.2d 259 (Mo.App.S.D. 1993), which held respectively that the probate division was not a court of general jurisdiction and that not even an action on an administrator's bond was a probate matter (Tab 2 Suggestions pages 2 and 3). the instant opinion (Tab 1) would make the probate division a court of general jurisdiction, at least with respect to any estate it administers. This Court can give valuable guidance to bench and bar by taking up this cause to define more precisely the limits of probate jurisdiction. Greater predictability in this area can reduce uncertainty and inefficiencies in the administration of justice.

4. An attorney has a lien on the recovery effected through his efforts and may follow that recovery by equitable means (Whitecotton v. St. Louis & Hannibal Railway Company, 250 Mo 624, 157 S.W. 776 and Smoot v. Shy, 169 Mo.App 126, 139 S.W. 239 (Mo.App. St. Louis 1911). An attorney's lien may be enforced by equitable means, as by following the proceeds of judgement paid to another (Smoot v. Shy, supra). Upon the settlement of an action, an attorney may (1) follow the proceeds (2) recover from the defendant or (3) enforce his lien against the judgment (Lawson v. Missouri & Kansas Tel. Co. (1914) 164 S.W. 138, 178 Mo.App. 124; Curtis v. Metropolitan St. R. Co.

(1906) 94 S.W. 762, 118 Mo.App. 341). The instant opinion purports to carve out an exception on the basis of Carter v. Stendeback, 482 S.W. 2d 534 (Mo.App. 1972), and a notion that recourse under Section 473.397 as a class 2 claim takes the place of the lien. In the first place, the lien is not circumscribed by the statutory Section 484.130. It is a common law and equitable property interest as well. It is on recovery, and applies to the assets of the estate in this particular case because the recovery is used by the probate division to offset distributive shares - probably for the purpose of obstructing Appellant's compensation. Carter does not apply because Carter does not involve a recovery for and on behalf of the estate. The appellate court overlooks Carter's express application to "an attorney's lien ... based on a judgement rendered against a beneficiary ...." (Tab 1 page 7; emphasis as the appellate court expressly holds, there is (Tab 1 page 10). It is true that Appellant has a right to recover his fee as an administrative expense (Tab 1 page 10). but Appellant also has a lien on the recovery he effected for and on behalf of the estate. The appellate court cites no applicable authority, reason or principle negating an attorney's lien on recovery merely because the recovery benefits a decedent's estate. If lawyers are to be disadvantaged in probate litigation, people could find it difficult to find capable and diligent lawyers to represent them in redressing probate grievances. As more and more people go through long periods of infirmity before death, there may be increasing need to bring adversary probate actions such as actions for the discovery of assets, which will increase the need for capable and diligent counsel.

WHEREFORE, Appellant Albert W. L. Moore, Jr., prays this Court issue its order of transfer directing the judges of the Missouri Court of Appeals, Western District, to certify to this Court the record in said mentioned cause and, upon consideration thereof, to quash said judgement of the said Court of Appeals and give such other and further relief as may seem meet and proper in the premises.

s/

ALBERT W. L. MOORE, JR. #18921
554 South Ash
Independence, Missouri 64053
(816) 254-6070

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing application for transfer to the Supreme Court of Missouri of the case styled Moore v. Campbell, WD 49694, was mailed, first-class postage prepaid, this eleventh day of August 1995 to Peggy J. Stevens McGraw, Clerk, Missouri Court of Appeals, Western District, 1300 Oak, Kansas City, Missouri 64106, to Les D. Wight, Esq., 530 East 23rd Street, Independence, Missouri 64055, Attorney for Defendants Joseph E. Campbell and Richard F. Campbell, and to Respondent Rebbecca lake Overman, Esq., 221 West Lexington, Independence, Missouri 64050, Administrator ad Litem.

s/_____

Albert W. L. Moore, Jr. #18921
554 South Ash
Independence, Missouri 64053
(816) 254- 6070
Pro Se

IN THE SUPREME COURT OF MISSOURI

ALBERT W. L. MOORE, Jr.	)	
	)	Circuit Court
	)	No. CV94-5667
Plaintiff/Appellant	)	
	)	Court of Appeals
	)	No. WD49694
	)	
	)	Supreme Court
	)	No.
	)	
vs.	)	Court of Appeals
	)	Western District
	)	
	)	Circuit Court
	)	for Jackson County
JANICE C. CAMPBELL, et al.	)	
	)	
Defendants/Respondents	)	

CERTIFICATE OF NOTICE

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s/

ALBERT W. L. MOORE, JR. #18921
554 South Ash
Independence, Missouri 64053
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PRO SE

CERTIFICATE OF SERVICE

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s/

Albert W. L. Moore, Jr.
Pro Se

IN THE SUPREME COURT OF MISSOURI
No. 78244
W.D. No. 49694

September Session, 1995

Albert W. L. Moore, Jr., Appellant,

vs. (TRANSFER)

Janice C. Campbell, et al., Defendants,

Rebecca [sic] Lake Overman, Respondent.

Now at this day, on consideration of appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 1995, and on the 19th day of September, 1995, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 19th day of September, 1995.

s/_____ Clerk

_____D.C.